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Supreme Court of the United States,

OCTOBER TERM, 1899.

Filed Oct. 11, 1899.

No. ~~331~~ 94.

THE SARANAC LAND AND TIMBER COMPANY,
*Plaintiff in Error,*

*against*

JAMES A. ROBERTS, AS COMPTROLLER OF THE STATE OF NEW YORK,
*Defendant in Error.*

# BRIEF FOR PLAINTIFF IN ERROR.

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# Supreme Court of the United States.

SARANAC LAND AND TIMBER COMPANY,
Plaintiff in Error,
*against*
JAMES A. ROBERTS, as Comptroller of the State of New York,
Defendant in Error.

October Term, 1897
No. 941.

**Error to the Circuit Court of the United States for the Northern District of New York.**

## Brief for Plaintiff in Error.

### STATEMENT OF THE CASE.

This is an action of ejectment brought by the plaintiff in error—a New Jersey corporation—against the defendant in error—a citizen of New York—to recover a tract of 7,500 acres of wild, vacant forest land, known as the Northwest Quarter of Township 24, Great Tract One, Macomb's purchase, situated in Franklin County, in the Northern District of the State of New York.

The writ of error is taken direct to this Court under the sixth subdivision of section five of the Judiciary Act of March 3, 1891, the case being one in which a law of the State of New York is claimed to be in con-

travention of the Constitution of the United States. The law of New York, the validity of which is drawn in question is chapter 448 of the Laws of that State of 1885—a short statute of limitation designed to validate sales of land theretofore made for unpaid taxes. This statute is the same act which was before this Court on error to the New York Court of Appeals in *Turner* vs. *New York* (1897), 168 U. S., 90, in which case the judgment of the State Court sustaining the law was affirmed.

The act in question, chapter 448 of 1885, became section 12 of chapter 711 of the Laws of 1893, which latter act was a partial revision of the law in regard to tax sales (Appendix, p. 104).

The State of New York claims title to the land in question under tax sales, and the real object of the action is to try the validity of these sales and of the title so acquired.

The action was brought against the defendant as Comptroller of the State, upon the theory that he was in actual possession of the land under a statute of the State, and that an action of this nature had been authorized by the Legislature for the purpose of trying the title of the State.

That statute is as follows:

> "The comptroller may advertise once a week
> " for at least three weeks successively, a list of the
> " wild, vacant and forest lands to which the state
> " holds title, from a tax sale or otherwise, in one
> " or more newspapers to be selected by him, pub-
> " lished in the county in which the lands are situ-
> " ated, and from and after the expiration of such
> " time, all such wild, vacant or forest lands are
> " hereby declared to be and shall be deemed to be
> " in the actual possession of the comptroller, and
> " such possession shall be deemed to continue

" until he has been dispossessed by the judgment " of a court of competent jurisdiction."

Chapter 711 of Laws of 1893, sec. 13, being a revision of chapter 453 of Laws of 1885, sec. 4 ; Appendix, pp. 86, 104.

The complaint is in the usual form of ejectment against a defendant in actual possession (Record, p. 2).

The defendant demurred to the complaint upon the ground that the Court had not jurisdiction of defendant as Comptroller, nor of the State of New York, which was the real party in interest (Record, p. 4).

The Court overruled the demurrer, holding, *first*, that defendant, being sued as a trespasser, could not defeat the jurisdiction of the Court by merely *alleging* the title of the State ; and, *second*, that express authority to bring the action had been given by the State by chapter 711 of the Laws of 1893—the act above quoted (Record, p. 26–27).

The defendant then answered denying all the allegations of the complaint (except the corporate organization of plaintiffs and the citizenship of defendant), and setting up the tax title claimed by the State, and alleging the *State* to be in actual possession under them (Answer, secs. II., III., IV. and V.). He also set up as separate and special defenses : *First*, the six months' statute of limitation, contained in chapter 448 of the Law of 1885—the act claimed to be in contravention of the Constitution of the United States (sec. VI. of answer) ; *second*, different aspects of the statutes against champerty (secs. VII., VIII., X. XI., XII., XIII., XIV. of answer) ; *third*, illegal organization of plaintiff (sec. IX. of answer) ; and, *fourth*, a former adjudication by the Comptroller made on an application to cancel one of the tax sales under which the State claimed title.

The trial began before the Court and jury.

The following facts appeared upon the trial and are now shown by the record and bill of exceptions.

(1) The land in question is wild forest land. It was granted by the State of New York in 1798 to Daniel McCormick in fee simple, and plaintiff has succeeded to his title (except as to a parcel of 1000 acres in the northwest corner) unless the same has been cut off and re-transferred to the State by the tax sales hereafter mentioned (Record, p. 16).

(2) It was sold to the State at the tax sale of 1877 for the unpaid taxes of 1866 to 1870, inclusive, amounting to $2,756.40. The usual deed to the State was made on June 8, 1881, and recorded in the proper office on June 9, 1882 ( Record, p. 17).

(3) It was again in form sold to the State at the tax sale of 1881 for the taxes of 1871–1876, and the usual deed executed October 31, 1884, which was duly recorded March 5, 1887 (Record, p. 17). At this sale the land was treated as already State property from the preceding sale, and no opportunity was given for any person to bid thereon, it being immediately struck off to the State in pursuance of a statute which so directed (Record, p. 22).

(4) It was again in form sold to the State at the tax sale of 1885 for the taxes of 1877 to 1879 and the usual deed made February 15, 1890, and recorded March 3, 1891 (Record, p. 18). At this sale it was again treated as State property and struck off to the State without giving opportunity for bids (Record, p. 22).

(5) It was again in form sold to the State at the tax sale of 1890 for the taxes of 1861–1865, and a certificate of such sale given, but no deed. At this sale as at the two prior ones, it was treated as State property and no bids allowed (Record, pp. 19–22).

(6) At the sale of 1877 the whole of the Northwest Quarter of Township 24 was sold as one parcel for the aggregate unpaid taxes of the years 1866 to 1870, in-

clusive, amounting, exclusive of interest, to $1,484.59, and with interest and costs added to $2,756.40. The taxes of each of the years 1866 and 1867 were assessed against the whole quarter as one parcel of 7,500 acres. In each of the years 1868, 1869 and 1870, the whole quarter was not assessed or taxed, and so much of it as was assessed was placed upon the roll in two parcels under a description as follows:

> Township 24, Great Tract 1, Macomb's Purchase; N. W. ¼ excepting one thousand acres lying in N. W. corner; also 1,215 acres which is water, leaving 5,285 acres.
>
> Macomb's Purchase, Great Tract 1, Township 24, 1,000 acres, lying in the northwest corner of Northwest Quarter (Record, pp. 20, 21).

(7) The Northwest Quarter of said Township 24 contains, and for more than 30 years past has contained, a part of Lower Saranac Lake, a part of Middle Saranac Lake, a part of Little Weller Pond, and a part of the Saranac river, and these are the only bodies of water which are or have been within it, and no part of either of them is within the parcel of 1,000 acres in a square form in the northwest corner. The area of so much of these bodies of water as is within the said quarter is as follows: Lower Saranac Lake (excluding islands), 905 acres; Middle Saranac Lake (excluding islands), 110 acres; Little Weller Pond, 20 acres, or a total of 1,035 acres (Record, p. 22). During the years 1866–1870 there was a dam across the outlet of the Lower Saranac Lake built to facilitate the running of logs down the Saranac river; when this dam was closed, the level of the lake was raised and from two hundred to two hundred and fifty acres of marsh land flooded (Record, p. 23).

(8) In December, 1894, the defendant caused a notice to be published once a week for three successive weeks in a newspaper published in Franklin County, of which the following is a copy:

"To whom it may concern:

"Notice is hereby given that the following is "the list of wild, vacant forest lands located in the "County of Franklin to which the State holds "title, and that from and after three weeks from "the 22d day of December, 1894, possession there- "of will be deemed to be in the Comptroller of "this State, pursuant to the provisions of section "13 of chapter 711, Laws of 1893."

WILLIAM J. MORGAN,
Deputy Comptroller.

The list attached to this notice contained the land in question (Record, pp. 16, 17).

(9) This action was begun January 29, 1895 (Record, p. 17).

When the testimony was closed counsel for both parties admitted that there was no question of fact for the jury and that the case depended upon the construction which the Court should give to the law. The jury was thereupon discharged and a stipulation filed that the issues be tried and decided by the Court without a jury, pursuant to section 649 of the Revised Statutes (Record, pp. 11, 22).

Plaintiff then asked the Court to rule upon certain propositions of law material to the case. The Court did so, disposing of most of them adversely to the plaintiff. To each of these adverse rulings plaintiff excepted. The Court thereafter made a general finding in favor of defendant on the merits (Record, p. 25).

Judgment was entered in favor of defendant, determining not only that plaintiff was not entitled to possession, but also that the State of New York was the owner in fee simple of the land in dispute.

A bill of exceptions has been made containing the propositions of law submitted to the Trial Court, the rulings thereon and the exceptions thereto, together

with so much of the evidence as is necessary to show that the propositions of law upon which rulings were asked by plaintiff had a foundation in the facts and were material to a proper disposition of the case.

It appears from the petition for the writ of error and affidavit attached that the land in dispute is worth more than $75,000 (Record, pp. 29, 30).

## Specifications of Error.

I.—The Court erred in refusing to affirm the first proposition of law submitted by plaintiff, as follows:

> "*First*—Assuming that the sale by the Comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, which taxes were assessed against separate and distinct parcels of the tract sold, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893."

II.—The Court erred in refusing to affirm the second proposition of law submitted by the plaintiff, as follows:

> "*Second*—Assuming that the sale by the Comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, during one or more of which years a part of the tract sold was not assessed or taxed at all, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void, and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893."

III.—The Court erred in refusing to affirm the third

proposition of law submitted by the plaintiff, as follows:

> "*Third*—Assuming that the proof shows a sale by the Comptroller of a tract of land as one parcel for the aggregate unpaid taxes of several years, some of which taxes were assessed against the whole tract sold and others against a part of the tract only, such sale was not authorized by law in 1877; such mode of sale would be a jurisdictional defect in the proceedings, and a sale so made is void and is not cured or validated by chapter 448 of Laws of 1885, or chapter 711 of Laws of 1893."

IV.—The Court erred in refusing to affirm the fifth proposition of law submitted by the plaintiff, as follows:

> "*Fifth*—If the Court shall find that the sale of the land in question at the 1877 tax sale was made for the unpaid taxes of 1866, 1867, 1868, 1869 and 1870, and that the taxes for the years 1868, 1869 and 1870 as against a parcel of 5,285 acres of the tract sold were based upon an assessment of the parcel in which it was described as follows: 'Township 24, 'Great Tract, one Macomb's Purchase, Northwest $\frac{1}{4}$, 'excepting one thousand acres lying in the north-'west corner; also 1,215 acres which is water, 'leaving 5,285 acres'; and if the Court shall also find that the area of land covered by water in said Northwest Quarter, outside of the 1,000 acres in the Northwest corner was substantially more or less than 1,215 acres, then such description was not sufficient to identify the parcel assessed with reasonable certainty and the taxes based upon such assessment were void, and the sale of 1877 was also void. Such assessment was a jurisdictional defect in the proceedings, and the sale was not cured or validated by chapter 448 of the Laws of 1885, or by chapter 711 of the Laws of 1893."

V.—The Court erred in refusing to affirm the sixth proposition of law submitted by the plaintiff, as follows:

> "*Sixth*—If the Court shall find that the taxes of 1868 as against a parcel of one thousand acres of the tract sold at the 1877 sale were based upon an assessment in which said parcel was described as follows: 'Macomb's Purchase, Great Tract One, 'Township 24, northwest corner of Northwest 'Quarter 1,000 acres'; and that the taxes of 1869 and 1870 against said parcel were based upon assessments in which it was described as follows: 'Great Tract No. 1, Macomb's Purchase, Township '24; 1,000 acres, lying in the northwest corner of 'the Northwest Quarter,' then such description was not sufficient to identify the parcel assessed with reasonable certainty, and the taxes based thereon were void; and if the sale of 1877 was made for such taxes as well as the taxes of other years, such sale was also void; such assessment was a jurisdictional defect in the proceedings and the sale was not cured or validated by chapter 448 of the Laws of 1885, or by chapter 711 of the Laws of 1893."

VI.—The Court erred in refusing to affirm the seventh proposition of law submitted by the plaintiff, as follows:

> "*Seventh*—If the Court shall find that at the sale of 1881 the Comptroller treated the land in question as already the property of the State and struck the same off to the State without giving any opportunity for other persons to bid thereon, then the State acquired no title by reason of such sale, and such sale was not validated or made effectual by chapter 448 of the Laws of 1885, or by chapter 711 of the Laws of 1893."

VII.—The Court erred in refusing to affirm the

eighth proposition of law, submitted by plaintiff, as follows:

> "*Eighth*—Chapter 448 of the Laws of 1885 is unconstitutional and void and is repugnant to the Fourteenth Amendment of the Constitution of the United States."

VIII.—The Court erred in receiving in evidence the deed made by the Comptroller to the People of the State of New York in pursuance of the tax sale of 1881, dated October 31, 1884, which deed purported to convey to the People of the State of New York, two parcels of land in the Northwest Quarter of Township 24, by the following description:

> "Macomb's Purchase, Great Tract One, Township 24, Northwest Quarter, 5,285 acres, more or less, being all that remains of the said Northwest Quarters after excepting therefrom 1,000 acres in the northwest corner thereof, and 1,215 acres covered by water. 1,000 acres in the northwest corner of the Northwest Quarter"

—and in overruling the objections of plaintiff that said deed was void upon its face for uncertainty of description.

IX.—The Court erred in receiving in evidence the certificate of sale issued by the Comptroller to the People of the State of New York upon the tax sale of 1890, and in overruling the objections of the plaintiff to said certificate that it was not evidence of a conveyance of the title, but at most only evidence of an equitable title which could not be considered in an action of ejectment in this Court and that the deed of the Comptroller was the best evidence of a conveyance under the tax sale.

The questions arising under these specifications of error, may be reduced in a general way to two:

FIRST—*Is chapter* 448 *of the Laws of New York of*

1885 *a valid and constitutional law when set up by the State in its own favor?*

SECOND—*Were the defects shown to exist in the tax sales or either of them of such nature as to be beyond the reach of that law if valid, accepting the construction which has been put upon it by the New York Court?*

The act—the validity of which is in question—chapter 448 of Laws of 1885—is as follows:

## LAWS 1885, CHAPTER 448.

AN ACT to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

SECTION 1. Section sixty-five of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as to read as follows:

§ 65. Such conveyances shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the treasurer or deputy comptroller, and all such conveyances that have been heretofore executed by the comptroller, and all conveyances of the same lands by his grantee or grantees therein named, after having been recorded for two years in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller that shall have remained in force for two years after the last day allowed by law to redeem from such sale shall, six months after this act takes effect, be conclusive evidence that the sale and all proceedings prior thereto, from and including the assessment

of the land and all notices required by law to be given previous to the expiration of the two years allowed by law to redeem, were regular and were regularly given, published and served according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto, and all other conveyances or certificates heretofore or hereafter executed or issued by the comptroller, shall be presumptive evidence of the regularity of all the said proceedings and matters hereinbefore recited, and shall be conclusive evidence thereof from and after the expiration of two years from the date of recording such other conveyances or of four years from and after the date of issuing such other certificates. But all such conveyances and certificates and the taxes and tax sales on which they are based, shall be subject to cancellation, as now provided by law, on a direct application to the comptroller or an action brought before a competent court therefor, by reason of the legal payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid.

§ 2. The provisions of this act are hereby made applicable only to the following counties, namely: Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Sullivan, Ulster, Warren and Washington, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken, or application duly made within six months thereafter for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder."

It was held by this Court in the *Turner* case, following the construction given to the act by the New York courts, that this statute, "according to its principal intent and effect," was a statute of limitation (168 U.

S., 90). So, also, as construed by the New York courts, the act does not extend to tax sales void by reason of jurisdictional defects.

Joslyn *vs.* Rockwell (1891), 128 N. Y., 334.

## ARGUMENT.

### FIRST.

**The writ of error is properly taken to this Court.**

It is true that the jurisdiction of the Circuit Court was originally invoked by reason solely of the diverse citizenship of the parties, and that no claim was made by the complaint that any law of the State was unconstitutional. No such allegation could have been appropriately inserted in a complaint in ejectment. Defendant, by its answer, sought to take advantage of the limitation contained in chapter 448, Laws of 1885, thereby asserting the validity of that law (Record, p. 8).

Plaintiff met the tax titles set up by defendant by proof which showed the sales to have been void when made, thus forcing the defendant to avail himself of the limitation law of 1885. Plaintiff sought to meet this law by asking the Court to rule, *first*, that the defects proved in the tax title were of a jurisdictional nature, and therefore not within the provisions of the act; and *second*, that the act itself was repugnant to the Constitution of the United States (Record, p. 25).

The Court refused to so rule, but on the contrary held that the defects shown to exist in the tax sales were in the nature of irregularities only and therefore within the scope of the new limitation law, and that the validity of that law had been conclusively estab-

lished by the decision of this Court in *Turner* vs. *New York* (1897), 168 U. S., 90 (Record, p. 28).

It is thus evident that defendant has been successful solely by reason of the law in question, and the validity of this law was challenged upon the trial.

The case is therefore one in which a "law of a state "is claimed to be in contravention of the Constitution "of the United States," and a writ of error lies direct to this Court.

Holder *vs.* Aultman (1897), 169 U. S., 81, 88.

In such cases the jurisdiction of this Court is not limited to the constitutional question but extends to and includes the whole case and all questions in it.

Holder *vs.* Aultman (1897), 169 U. S., 81.
Scott *vs.* Donald (1896), 165 U. S., 58.

The plaintiff in error is therefore entitled to a review not only of the question as to the validity of the State law which is challenged, but also of all other questions in the case properly presented on the record.

## SECOND.

**The questions which we seek to review were properly raised by the exceptions taken to the refusal of the trial Judge to affirm the propositions of law submitted to him and contained in the bill of exceptions.**

The case having been, in effect, tried by the Court without a jury, under section 649 of the Revised Statutes, and the Court having made a general finding, the only way in which the "construction which the Court should give to the law," upon which it was admitted the issues depended (Record, p. 23), could be brought

upon the record and saved for review, was by asking the Court to rule upon the propositions of law entering into the case, and to declare the law to be as embodied in the propositions submitted. This was done, and the requests, rulings and exceptions are brought up by the bill of exceptions (Record, pp. 23–24).

This practice is, we think, in accordance with the rules established by this Court in regard to the review of actions at law tried by the Court without a jury.

Norris *vs.* Jackson (1869), 9 Wall., 125.
Insurance Co. *vs.* Sea. (1874), 21 Wall., 158.
Martinton *vs.* Fairbanks (1884), 112 U. S., 670.
Redfield *vs.* Parks (1889), 132 U. S., 239.
St. Louis *vs.* Western Union Tel. Co. (1893), 148 U. S., 92.
St. Louis *vs.* Western Union Tel. Co. (1897), 166 U. S., 388.

In *Norris* vs. *Jackson* [1869] (9 Wall., 125) this Court laid down certain rules to govern the practice under the Act of 1865 (now sections 649 and 700 of the R. S.), allowing parties in actions at law to waive a jury and submit the whole case to the Court. One of these rules is as follows (p. 128) :

> " 3. That if the parties desire a review of the " law involved in the case, they must either get " the Court to find a special verdict, which raises " the legal propositions, or they must present to " the Court their propositions of law, and require " the Court to rule on them."

It is not possible for a party to compel special findings.

Ins. Co. *vs.* Folsom (1873), 18 Wall., 237.

The only other way in which it is possible to review the law which has gone into a general finding is by re-

quiring the Court to affirm or deny the propositions of law which are material to any state of facts shown by the evidence.

The practice adopted by the plaintiff in error to secure a review of the questions of law involved in the case was intended to be that pointed out and sanctioned by BLATCHFORD, *J.*, in *Clement* vs. *Phenix Ins. Co.* (1869), 7 Blatch., 51–53. This decision was practically contemporaneous with that of this Court in *Norris* vs. *Jackson*, 9 Wall., 125 (1869), and we think the practice sanctioned by it is that intended by this Court in the third rule enunciated by it in the *Norris* case.

In *Insurance Co.* vs. *Sea.* (1874), 21 Wall., 158, the rules of the *Norris* case were reiterated and the practice declared to have been distinctly and positively settled. It is evident from this that it was not intended by anything said in *Insurance Co.* vs. *Folsom* (1873), 18 Wall., 237, or *Cooper* vs. *Omohundro* (1873), 19 Wall., 69, to change or limit the rules of the *Norris* case. It would seem, also, to make clear that what was said by *Bradley, J.*, in *Dirst* vs. *Morris* (1871), 14 Wall., 484, 491: "As the law "stands, if a jury is waived and the Court chooses to "find generally for one side or the other, the losing "party has no redress on error, except for the wrong- "ful admission or rejection of evidence"—is not accurate as a general statement, and must be confined to cases similar to that then before the Court, in which no request for rulings on propositions of law had been made.

The practice of submitting propositions of law to the Court and excepting to adverse rulings thereon as a method of saving for review the questions of law which have gone into a general finding, has also been approved by some of the Circuit Courts of Appeal.

Mercantile Trust Co. *vs.* Wood (1894), 19 U. S. App., 568.

Walker *vs.* Miller (1894), 19 U. S. App., 403.

Nat. Bank of Commerce. *vs.* First Nat. Bk. (1894), 27 U. S. App., 88.
Searcy Co. *vs.* Thompson (1895), 27 U. S. App., 715.

## THIRD.

**The decision of this Court in Turner against New York, 168 U. S., 90, does not preclude further consideration of the constitutionality of the law of New York—chapter 448 of Laws of 1885—challenged upon this record.**

The Turner case came before this Court on error to the State Court. Upon such a writ, the only question for the consideration of this Court is the so-called Federal question. Other questions of purely State law are not open to examination.

Murdock *vs.* Memphis (1874), 20 Wall., 590.

No limitation law is or can be valid unless while it is running the person to be affected by it has opportunity to assert his rights in some tribunal competent both to ascertain and enforce them.

Cooley, Const. Lim., 3d Ed., 366.

The question as to the validity of the law challenged in the present case must turn on whether or not during the six months allowed for that purpose the owner of the land could have asserted his right to it as against the State, in some court or tribunal competent to try such claim and whose decision would be binding on the State.

In the *Turner* case it was urged that under the laws of New York the State itself could not be sued, and that no way existed by which the title claimed by the State and about to be validated by the new limitation

law could be brought to the test of judicial investigation. This Court met the argument as follows:

> " It was argued on behalf of the plaintiff in error " that the statute was unconstitutional, because it " did not allow him any opportunity to assert " his rights, even within six months after its pas- " sage. But the statute did not take away any " right of action which he had before its passage, " but merely limited the time within which he " might assert such a right. Within the six " months, he had every remedy which he would " have had before the passage of the statute. If " he had no remedy before, the statute took none " away. From the judgments of the Court of Ap- " peals in the case at bar, and in the subsequent case " of *People* vs. *Roberts* (1897), 151 N. Y., 540, there " would appear to have been some difference of " opinion in that Court upon the question whether " his proper remedy was by direct application to " the Comptroller to cancel the sale, or by action " of ejectment against the Comptroller or the For- " est Commissioners. But as that Court has uni- " formly held that he had a remedy, it is not " for us to determine what that remedy was under " the local constitution and laws."
>
> Turner *vs.* New York (1897), 168 U. S., 90, 94.

It seems from this opinion, as we understand it, that in the Turner case the existence of a remedy in favor of the owner and against the State during the six months following the passage of that new law was treated as a question of purely State law upon which the decisions of the State Court right or wrong were final. This Court treated the question as to whether a remedy did or did not exist as foreclosed by the decisions of the State Court and held that the correctness of the decision in that respect was not open to re-

view. This view of the effect of the judgment of the State Court reduced the constitutional question to its lowest terms.

In the present case the Court is called upon to review the judgment of the Circuit Court of the United States and the whole case is here for review. The questions which, in the Turner case, were assumed to have been correctly decided because they were questions of State law, must now be decided by this Court for itself.

Miss. & Mo. Railroad Co. *vs.* McClure (1870), 10 Wall., 507, 515.

Central Land Co. *vs.* Laidley (1895), 159 U. S., 103, 111.

Fallbrook Irrigation District *vs.* Bradley (1896), 164 U. S., 112, 154.

It may be conceded that the former decision is final as regards the reasonableness of the time allowed by the new law—six months—in which the land owner was bound to assert his rights. So also it may be conceded that if this Court, upon its own examination of the law of New York shall come to the conclusion that the land owner did have an effectual remedy against the State while the new limitation law was running, in either one of the three ways suggested in the Turner case or otherwise, then the constitutional question, as now presented, will be answered by the former decision of this Court. But the question whether an effectual remedy did or did not exist must be decided by this Court for itself and not taken for granted.

We are not unmindful of the rule that this Court will in general adopt the construction which the highest court of a State has given to its own constitution and laws. As was said in *Leffingwell* vs. *Warren* (1862), 2 Black, 599, 603, this Court will follow the "latest settled adjudications." But if it shall appear that the existence of either of the remedies alleged to have existed in favor of

the land owner and against the State has never been actually adjudicated by the Court of Appeals of New York, it will then be the duty of this Court to examine the statutes upon which the claim of such remedy is based and determine for itself whether or not the claim is well founded.

Burgess *vs.* Seligman (1882), 107 U. S.. 20–33.

We submit in all confidence that an examination of the New York authorities will show—

(1) That as regards the remedy by application to the Comptroller to cancel, the New York Court of Appeals has decided both ways, but that the "latest settled adjudication" of that Court is *against* the existence of the remedy claimed.

(2) That no action of ejectment against the Forest Commission has ever been brought and decided, and of course no adjudication has ever been made either for or against the liability of that Commission to such a suit.

(3) No action of ejectment against the Comptroller was ever brought except those based upon his taking actual possession under a statute of 1885, and such possession was not taken as regards the land in question until December, 1894, and this action was begun in January, 1895 (Record, pp. 16–17).

If we are right in this, it will then be for this Court to examine the law of New York and determine whether the land-owner had any remedy which he could have asserted against the State, what that remedy was and whether it was *such* a remedy as must exist in favor of the citizen before he can be deprived of his property under cover of a limitation law.

The opinion of the Court in the *Turner* case suggests that if the land-owner had no remedy before the new limitation law was passed he lost nothing, because that statute took none away.

This suggestion seems to involve an erroneous view of the situation by the land-owner whose land had been illegally sold for taxes *prior to the passage of the limitation law.* We of course admit—we are here asserting—that in all cases in which the State was the nominal purchaser the land-owner had no remedy. *But he needed none.* An illegal tax sale is a nullity. It does not affect the title or possession of the true owner.

Johnson *vs.* Elwood (1873), 53 N. Y., 431, 434.

Thompson *vs.* Burhans (1874), 61 N. Y., 52, 67.

Clason *vs.* Baldwin (1897), 152 N. Y., 204.

Notwithstanding the formal sale and conveyance of his land to the State, the true owner remained seized in fee, entitled to the possession, and, as regards wild, vacant forest lands, legally in possession. He had, therefore, everything which the law could give him, and if he had no remedy as against the illegal and void deed he needed none.

Cooley, Const. Lim., 6th ed., p. 449 and note 3.

Groesbeck *vs.* Seeley (1865), 13 Mich., 329.

In the case last cited, CAMPBELL, *J.*, says (13 Mich., p. 343):

> "A person who has a lawful right, and is actu-
> "ally or constructively in possession, can never
> "be required to take active steps against oppos-
> "ing claims. The law does not compel any man
> "who is unassailed to pay any attention to unlaw-
> "ful pretenses which are not asserted by posses-
> "sion or suit."

Of course if the State had taken actual possession under its illegal deed, then a wrong would have been done to the owner and a remedy would at once have arisen by action against the officer or agent of the State as a trespasser and a wrongdoer. But when the new

limitation law began to operate the situation was changed. The State by this law undertook to give life to that which was born dead; to make deeds which were nullities when made, and which had remained nullties for years, valid and effectual to transfer title from the citizen to the State.

A curative and limitation law such as is now before the Court presupposes invalid and illegal deeds. Valid tax titles need no such assistance.

Pillow *vs.* Roberts (1851), 13 How., 472, 477.

The position of the land-owners became, by force of the new law, such that he must take the initiative or lose his land. The need for some remedy now became urgent. Had the State, by legislation prior or contemporary, provided that remedy? This, we submit, is the vital question in the case—a question to be decided by this Court, and which if decided in the negative must invalidate the limitation law.

## FOURTH.

### The act in question—chapter 448 of the Law of 1885—considered as a limitation law in favor of the State, is not valid because the land-owner had no opportunity to assert his rights against the State.

We assume the law to be a limitation law, and that the *Turner* case so decided. We also assume, without discussion, that a law shortening existing periods of limitation, or fixing a new limitation in cases where there was none, must give reasonable opportunity for the assertion of existing rights unaffected by the new law and that such opportunity requires persons to sue and to be sued, a court competent both to ascertain

and enforce their rights, and time in which to invoke its aid.

Cooley, Cons. Lim., 6th Ed., 449.

The *Turner* case established the sufficiency of the time allowed by the law now in question, but it treated the existence of a Court competent to try the disputed rights and of a person liable to be sued for that purpose as questions of State law and foreclosed by the judgment of the State Court. These things ought now to be decided and not assumed.

It is, of course, settled law that the State itself cannot be impleaded in its own Court except with its own consent manifested by express statute.

People *vs.* Dennison (1881), 84 N. Y., 272–283.
Locke *vs.* The State (1894), 140 N. Y., 480.
Meigs *vs.* Roberts (1898), 24 Miscellaneous Rep., 668.

This Court in the *Turner* case apparently contemplated three forms of procedure as existing in New York in 1885, under one of which the land owner might have asserted his title as against the State. These were:

1. Cancellation by the Comptroller.
2. Ejectment against the Forest Commission.
3. Ejectment against the Comptroller.

I.— Cancellation by the Comptroller.

It was understood by counsel when the *Turner* case was decided by the New York Court of Appeals (145 N. Y., 451), that its decision had been made to turn upon the existence of power in the Comptroller to cancel an illegal tax sale in cases in which the State itself had become the purchaser, and that in such cases the act of the Comptroller would bind the State.

GRAY, *J.*, says (145 N. Y., p. 460):

"By virtue of the Act of 1885, that opportunity
"to appear before the Comptroller and to de-
"mand the cancellation of the tax sale, because
"of irregularities in the proceedings leading to
"the sale, was continued for six months
"after the passage of the act. Differing from
"a case between the owner of lands and the
"purchaser thereof at the tax sale, where the
"Comptroller would not have the power upon the
"application of the owner to cancel a tax title, here
"the State became the owner through the pur-
"chase and it was open to the owner to come be-
"fore the Comptroller and to make proof of the
"invalidity of the sale through which the State
"derived its title. With the knowledge of the law,
"the person claiming to be the owner of the land
"sold was chargeable; and when put upon his
"inquiry, as to the result of the proceedings, he
"discovered the State to have become the pur-
"chaser, it was incumbent upon him to take affirm-
"ative steps to cancel the sale, if he would recover
"his title to the lands."

That decision was in 1895. Prior thereto the Court by a line of cases had established as a general rule that the Comptroller had no power to cancel an illegal tax sale upon the application of the owner whose lands had been sold—that such power could be exercised only at the instance and with the consent of the tax purchaser.

People *ex rel.* Wright *vs.* Chapin (1887), 104 N Y., 369.

Ostrander *vs.* Darling (1891), 127 N. Y., 70.

People *ex rel.* Hamilton Park Co. *vs.* Wemple (1893), 139 N. Y., 240.

People *ex rel.* Witte *vs.* Roberts (1894), 144 N. Y., 234.

The decision in the *Turner* case was understood to distinguish these cases and to so construe the statute relative to cancellation as to allow the Comptroller to cancel on motion of the owner *where the State itself* had become purchaser. But in the later case of *People* ex rel. *Millard* vs. *Roberts* (1897), 151 N. Y., 540, this view of the *Turner* case was denied, the Court then saying after a review of *all* the former cases (p. 543):

> "It is obvious that there was no intention to
> " modify or disturb these decisions by anything
> " that was said in the case of *People vs. Turner.*"

This was the last utterance of the New York Courts upon the subject at the time the *Turner* case was before this Court. Since then, however, the point has been passed upon in a way to remove any doubt, if doubt there could be after the decision reported in 151 N. Y.

The contest between Turner and the State was not only waged in the ordinary courts, but also before the Comptroller, and in 1891 that officer, upon proof showing the actual payment before the sale of part of the taxes for which the sale was made, cancelled and set aside that sale upon certain conditions not now material. The State, through the Forest Commission, brought certiorari to review the action of the Comptroller. The writ was first quashed upon technical grounds, but the order to that effect was reversed by the Court of Appeals and a rehearing ordered.

> People *ex rel.* Forest Commission *vs.* Campbell, 152 N. Y., 51.

This rehearing was had before the Appellate Division in November, 1897 (a month after the decision of this Court in the *Turner* case). In the opinion then rendered, PARKER, *P. J.*, says (22 App. Div., 172):

> "It is well settled that the Comptroller has no
> " jurisdiction to entertain an application on the

" part of the owner of lands sold for taxes to can-
" cel such sale on the ground of its illegality.
" There is no statute which has constituted him a
" court to decide controversies between the owner
" of lands so sold and the purchaser as to the va-
" lidity of the tax title (*People* ex rel. *Hamilton Park*
" *Co.* vs. *Wemple* (1893), 139 N. Y., 240, 245, 247;
" *People* ex rel. *Witte* vs. *Roberts* (1894), 144 N.Y., 234).
" And this is so even though the State was the pur-
" chaser and holds the title when such an applica-
" tion is made (*People* ex rel. *Millard* vs. *Roberts*
" (1897), 151 N. Y., 540). And when the Comptroller
" assumes to cancel such a sale on the application
" of the owner, his proceedings may be reviewed
" by certiorari (*People* ex rel. *Hamilton Park Co.* vs.
" *Wemple, supra*). And such review may be had
" upon the application of the Forest Commission
" (*People* ex rel. *Forest Commission* vs. *Campbell*
" [1897], 152 N. Y., 51).

"It is clear, therefore, without considering
" whether Turner, who made this application, was
" or was not the owner of the lands in question
" or whether the sale was or was not a valid one,
" that the order of Comptroller Wemple vacating
" and annulling the tax sale of 1877, and the deed
" to the State subsequently executed by reason
" thereof, and all proceedings upon which such
" order was based, were utterly without authority."

The Court, however, held that it was without power *in the certiorari proceedings* to grant conditional relief by requiring the State to refund to Turner the moneys which had been exacted from him by the Comptroller as a condition of the cancellation. It therefore again quashed the writ, leaving the State to bring an action to set aside the cancellation. Appeal was taken to the Court of Appeals, and the order quashing the writ was again reversed, the Court of Appeals holding that the

Appellate Division of the Supreme Court had power on a common-law writ of certiorari to reverse the order of the Comptroller upon such terms and conditions in regard to restitution as justice required, and a re-hearing was again ordered.

People *ex rel.* Forest Commission *vs.* Campbell (1898), 156 N. Y., 64.

In September, 1898, the matter came again before the Appellate Division and the order of the Comptroller cancelling the tax sale was finally reversed.

People *ex rel.* Forest Commission *vs.* Campbell (1898), 35 App. Div., 103.

II.—EJECTMENT AGAINST THE FOREST COMMISSION.

Upon this precise point the decisions of the New York Courts are silent. No action of ejectment against the Forest Commission has ever (so far as counsel are aware) been brought to trial in New York. The Court of Appeals of that State has therefore never had an opportunity of saying whether such action can or cannot be maintained. In the recent case of *Meigs* vs. *Roberts* (October, 1898; 24 Miscellaneous Reports, 668), the Supreme Court at Special Term held that ejectment cannot be maintained against the Comptroller notwithstanding the Acts of 1885 and 1893, authorizing that officer to take actual possession of the wild lands claimed by the State, and such possession actually taken as provided in those acts. We deny the correctness of the construction given to the act by that decision, but the general principles upon which it proceeds are well founded.

RUSSELL, *J.*, says (p. 670):

> "It is well known that no action can lie against "the State in one of its own Courts, and the auth- "ority to take from it any money or property by "judgment must be distinctly expressed and can- "not be implied (*People* vs. *Dennison* [1881], 84 "N. Y., 273). * * *

"As a matter of course the State cannot be dis-
"possessed of its property in its own Courts by
"an action in form against its servant or officer.
" * * *

"It follows, therefore, as a logical conclu-
"sion, that an action to determine the title of the
"plaintiff as against the State of New York can-
"not be maintained in the Courts of the State of
"New York unless that State has, in some manner,
"expressly given its consent to such form of pro-
"cedure."

These rules would apply with full force to any action brought against the Forest Commission.

The New York Code allows an action of ejectment to be brought against the actual occupant or in case of vacant lands against any person claiming title or exercising acts of ownership.

Code of Civil Procedure, secs. 1502, 1503, Appendix, p. 106.

In the *Turner case*, 145 N. Y., 451, the Court of Appeals said that the constructive possession which the State had acquired by force of the tax deed was made an actual possession by the powers and duties devolved upon the Forest Commission as its representative. This seems to mean that the State itself had become the actual occupant.

In People *ex rel. Forest Commission* vs. *Campbell* (1897), 152 N. Y., 51, 58, the Court said: "The possession of the Commission is the possession of the State."

It may well be questioned whether the Forest Commission, assuming it to have been clothed by the statute with a general possession of the Forest Preserve, is thereby made the "actual occupant" of such lands within the meaning of those words as used in the New York statute governing actions of ejectment.

People *vs.* Ambrecht (1859), 11 Abb. Pr., 97.

It was, of course, possible for the individual members of the Commission to have so taken possession of any given parcel of land as to have rendered themselves liable to an action as tresspassers and wrongdoers, in which case an action of ejectment might have been brought against them, but no such action could be based on possession thrust upon the Commission by operation of law. It would be a contradiction in terms to make one a wrongdoer by operation of law. The bill of exceptions, in the present case states that the defendant gave evidence tending to show that the land in question was in the actual possession of the Forest Commission (Record, page 20.)

There seems, therefore, to be two points of view from which an action of ejectment against the Forest Commission should be considered as determining whether or not a land-owner had an opportunity through such procedure to try his right to land claimed by the State: one considering such action, brought against the members of the Commission as individuals and wrongdoers; and the other, considering them as in possession by force of the statute and merely as representatives of the State.

(a) *Ejectment against the members of the Forest Commission as individuals and wrongdoers.*

It is the settled doctrine of this Court that an action of ejectment may be brought against an officer as agent of a State in actual possession of land claimed by the State, and that such officer, as agent, can defend his possession only by proving the validity of the State's title.

U. S. *vs.* Lee (1882), 106 U. S., 196.
Tindal *vs.* Wesley (1896), 167 U. S., 204.

By such an action the land-owner may recover a temporary possession of his land, and perhaps, by putting the State in a position where it must itself become the actor, compel it to submit its right, to the judgment

of the Court or give up its claim. But we contend that such an action would not afford the land-owner an opportunity of effectually asserting his right against the State, for the reason that the judgment would not be in any way binding upon the State, and that the latter, by waiting until the bar of the new limitation law had fallen, could by a new action recover back the land *solely by force of the new law.*

In *Tindal* vs. *Wesley, supra,* it is said by HARLAN, *J.* (page 223):

> "The State not being a party to the suit, the "judgment will not conclude it. Not having sub- "mitted its rights to the determination of the "Court in this case, it will be open to the "State to bring any action that may be appro- "priate to establish and protect whatever claim "it has to the premises in dispute. Its claim, if "it means to assert one, will thus be brought to "the test of the law as administered by tribunals "ordained to determine controverted rights of "property; and the record in this case will not be "evidence against it for any purpose touching the "merits of its claim."

Suppose the owner of land which had been illegally sold for taxes to the State had found, in June, 1885—immediately after the passage of the act in question—the members of the Forest Commission in actual occupation of his land and had brought ejectment against them; that upon the trial the Commission had set up the tax title claimed by the State; that facts showing the nullity of that title had then been proved, and in consequence the owner had obtained judgment for the possession of his land, and that after the six months allowed by the new law had expired the State itself sued to recover the land: What defense could the land-owner make? Plainly the judgment in his favor against the individuals comprising the

Forest Commission, would avail nothing. If he undertook to prove the facts by force of which he had ejected the Commission he would be at once met with the objection that no evidence, however persuasive, could overcome the conclusive presumption of the new law, and the Court would be bound to hold, *as it did in the Turner case*, that evidence showing illegalities in the proceedings leading up to the tax sale, or in the sale itself, was irrelevant and immaterial, and "that the sale * * * and all proceedings prior there-"to, from and including the assessment of the land "* * * were regular * * * according to the "provision of * * * all laws * * * in any "manner relating thereto by virtue of the rules of evi-"dence and limitation prescribed by chapter 448 of the "Laws of 1885" (see Record in Turner *vs.* New York, p. 12; also ruling of trial Court in that action striking out defendant's evidence, Record, p. 44).

It would be wiser for the Court to hold that a limitation law needs no precedent opportunity to render it valid than to hold that an action against the members of the Forest Commission as trespassers gave such opportunity as against the State.

(b) *Ejectment against the Forest Commission as the representative of the State.*

We assume it to be settled law that an action against an officer or agent of the State which would result in depriving it of its property, or compelling it to perform its contracts is, in effect, an action against the State itself and subject to the same rules.

Cunningham *vs.* Macon & Brunswick R. R. (1883), 109 U. S., 446.

Hagood *vs.* Southern (1886), 117 U. S., 52.

*In re* Ayers (1887), 123 U. S., 443.

Christian *vs.* Atlantic & N. C. R. R. (1890), 133 U. S., 233.

Adams *vs.* Bradley (1878), 5 Sawyer, 217.

Cope *vs.* Hastings (1897), 183 Penn., 300, 323.

Lowry *vs.* Thompson (1886), 25 S. C., 417.

Mills Pub. Co. *vs.* Larrabee (1889), 78 Ia., 97.

State *ex rel.* Hart *vs.* Burke (1881), 33 La. Ann., 498.

The rule which is established in New York, as well as by the decisions of this Court, was expressed by RAPALLO, *J.*, in *People* vs. *Dennison*, 84 N. Y., 272, 281, as follows:

> "No action can be sustained against the Govern-
> " ment except by its own express consent under
> " some special statute allowing it (11 How., 290).
> " * * * Authority to render a judgment against
> " the State or Government, in one of its own courts,
> " cannot be implied but must be express, nor can
> " it be claimed under general laws in which the
> " State is not named."

The question thus becomes one as to the existence and construction of some "special statute," by which the State has expressly consented that its title might be tried and decided in such an action; *i. e.*, an action against the Forest Commission.

We know of no statute which can be suggested as giving such consent except the act creating the Forest Commission itself (chap. 283 of 1885; Appendix, p. 93).

This act gave to the Commission the "care, custody, " control and superintendence of the Forest Preserve." It confers large powers as to bringing actions in the name of the State to recover lands belonging to the State, or damages for trespass upon them (section 11). It is silent as regards actions brought against them, except that section 11 contains this clause: "With the " consent of the Attorney-General and the Comptroller, " the Forest Commission may employ attorneys " and counsel to prosecute any such action, or to de-

" fend any action brought against the Commission " or any of its members or subordinates arising out " of their or his official conduct with relation to the " Forest Preserve. Any attorney or counsel so em- " ployed shall act under the direction of and in the " name of the Attorney-General. When such attorney " or counsel is not so employed, the Attorney-General " shall prosecute and defend such actions." This clause seems plainly to refer to suits based upon some act done by the Commission, its members or subordinates, and claimed to be an infringement upon private rights. It presupposes affirmative action by the Commission. It may be that if the Commission should take actual possession of land not owned by the State and eject- ment should be brought against them individually as trespassers, the clause would enable them to employ counsel at the expense of the State or to require the Attorney-General to defend them. But it is very far from being express consent on the part of the State that an action to try its title should be so brought and an agreement on its part to be bound by the judgment.

That it was not the intention of the Legislature to waive generally the exemption of the State from suit in the Courts as regards lands in the Forest Preserve seems evident from the 13th section of the act, which in express terms recognizes the exemption of the State from suit and then by appropriate and express words waives that exemption, upon certain conditions, as to an action for partition of lands held by the State in common with a citizen. As to such an action, the citizen (with the consent of the Forest Com- mission) may bring and maintain it against the State itself as a party on the record " in the same " manner as if the State were not entitled to exemp- " tion from legal proceedings." Provision is made for service of process upon the State, the procedure assimilated to that in other actions for partition, and

the judgment declared to which the State is willing to submit. Manifestly, when the Legislature of 1885 intended to waive the exemption of the State it knew how to do it; and having done it in clear, formal and express terms, as to one class of actions, the argument is a fair one that it did *not* intend to waive that exemption as to other actions.

It will no doubt be urged by the defendant that the New York Court of Appeals has already construed the act creating the Forest Commission in such way as to authorize an action of ejectment against that Commission as representing the State. We fully concede the general rule that the construction put upon a State statute by the State courts is binding upon this Court, but it is equally settled that the decisions of the State Court in order to conclude this Court, must be of such a nature that it would, by force of the rule of *stare decisis*, be binding on the State Court itself. In other words, there must be *decision* as distinguished from *dictum*.

Carroll *vs.* Carroll (1853), 16 How., 275.
Pollock *vs.* Farmers' L. & T. Co. (1895), 157 U. S., 429, 575.

In *Carroll* vs. *Carroll, supra*, this Court was reviewing a judgment of the Circuit Court for the District of Maryland in an action of ejectment brought by the heir-at-law of Carroll against his devisee. The land in question was acquired by the testator after making his will, and the question was whether it passed by it. By the common law of Maryland lands so acquired were not affected by the will. By a statute of 1850 the common-law rule was modified. Upon the argument a decision of the Maryland Court of Appeals was pressed upon the Court as a decision of the local Court, construing the statute and constituting a rule of decision for the Federal Court.

CURTIS, *J.*, said (p. 286):

"If the Court of Appeals had found it necessary "to construe a statute of that State in order to "decide upon the rights of parties subject to "its judicial control, such a decision, deliberately "made, might have been taken by this Court as a "basis on which to rest our judgment. But it "must be remembered that we are bound to decide "a question of local law, upon which the rights "of parties depend, as well as every other ques- "tion, as we find it ought to be decided. In "making the examination preparatory to this find- "ing, this Court has followed two rules, one of "which belongs to the common law, and the other "is a part of our peculiar judicial system. The "first is the maxim of the common law, *stare* "*decisis*. The second grows out of the thirty- "fourth section of the Judiciary Act, which makes "the laws of the several States the rules of decision "in trials at the common law; and inasmuch as "the States have committed to their respective ju- "diciaries the power to construe and fix the mean- "ing of the statutes passed by their legislatures, "this Court has taken such constructions as "part of the law of the State, and has admin- "istered the law as thus construed. But this rule "has grown up and been held with constant refer- "ence to the other rule, *stare decisis;* and it is only "so far and in such cases as this latter rule can "operate, that the other has any effect.

"If the construction put by the court of a State "upon one of its statutes was not a matter in judg- "ment, if it might have been decided either way "without affecting any right brought into question, "then, according to the principle of the common "law, an opinion on such a question is not a "decision. To make it so there must have been "an application of the judicial mind to the precise

"question necessary to be determined to fix the
"rights of the parties and decide to whom the
"property in contestation belongs."

Is it true then, that the New York Court of Appeals has construed the Forest Commission Law to authorize an action against the Commission to try the title of the State under such circumstances that its decisions would be binding upon that Court by force of the maxim *stare decisis?*

The only cases of which we are aware which can be cited as involving a construction of the Forest Commission Law are *People* vs. *Turner* (1895), 145 N. Y., 451; *People* ex rel. *Millard* vs. *Roberts* (1897), 151 N. Y., 540, and *People* ex rel. *Forest Commission* vs. *Campbell* (1897), 152 N. Y., 51.

So far as anything was said in the *Turner* case relating to the Forest Commission, it was only to the effect that the creation of that body put the State in actual possession through the commissioners as its representatives.

In *People* ex rel. *Millard* vs. *Roberts* (1897), 151 N. Y., 540, O'BRIEN, *J.*, says (p. 543):

"If the sale is invalid, his title" (the owner's)
"is not affected, and he may keep and defend his
"possession, or, if put out of possession, he may
"regain it by action of ejectment."

The proceeding in which these words were used was a writ of certiorari to review the action of the Comptroller in refusing to cancel an alleged illegal tax sale under the authority conferred upon him by the Act of 1855, sections 83 and 85, and the acts amendatory (Appendix, pp. 59, 60). The judgment of the Court was based upon its own prior decisions. The Forest Commission was not a party. No reference was made to the act creating it. It is not easy to see how the question of the right to maintain ejectment against that commission could have

entered into the case or had any bearing upon the only question then before the Court, namely, the power of the Comptroller to cancel. There was plainly nothing in the case to require an application of the judicial mind to the question whether or not the act creating the Forest Commission authorized ejectment against that Board.

The remarks of the learned Judge, while entirely *obiter*, were accurate enough as regards controversies between individuals, and we do not believe it was intended, even by the judge who used them, to suggest that the State had consented to be sued in ejectment.

The case of *People* ex rel. *Forest Commission* vs. *Campbell* (1897), 152 N. Y., 51, is equally remote from the point: That also was a writ of certiorari to review the action of the Comptroller in granting an application made by the owner of the land to cancel an illegal sale. The writ had been quashed by the Supreme Court on the specific ground "that the relator, The "Forest Commission, has no power or authority in a "case like this to obtain or prosecute such writ." It is the settled law of New York that an order simply quashing a writ of certiorari is discretionary, and not reviewable in the Court of Appeals; but in this case, the Supreme Court having denied its own power to entertain the writ at the instance of the Forest Commission, a question of law was presented, which could be reviewed. This was the only question in the case, and the decision is authority only for the proposition that the Forest Commission is authorized to represent the State as plaintiff; that it may sue on behalf of and in the name of the State; but *suing* is one thing—being *sued* is another and a different thing. An ordinary agent or attorney in fact may cause suit to be brought in the name and on behalf of the principal, but no one would think of suing him as and for his principal. It is true the Court in its opinion says (152 N. Y., 58):

"The act clearly contemplates not only actions "brought by the Commission in the name of the "State, but actions against the Commission or "any of its members or subordinates arising out "of their official action. It is difficult, when we "consider these sweeping provisions, to believe "that it was not the intention of the Legislature "to clothe the Commission with the amplest and "most complete powers to represent the State in "the Forest Preserve."

Granting that the act contemplates actions against the Commission, its members and subordinates, the question remains, what actions? Actions which may be brought without any consent from the State—which are not in form or effect against the State; or actions which can only be maintained in pursuance of the express authority of the Legislature; actions which are either in form or in substance against the State itself? It may be that power given to a State official to employ counsel to defend himself against attack based on his official action is *express authority* from the Legislature to sue the State through that official, and a waiver of the State's exemption from suit; but we submit in all confidence that the New York Court of Appeals has not yet so decided. If such an action were brought against the Forest Commission, and sought to be maintained by reference to the words above quoted, the Court of Appeals would be prompt to say, as in a recent case it has said:

"It was not our intention to decide any case "but the one before us, which simply involved the "standing of the plaintiff to make the application "in question, and our opinion should be read in "the light of that purpose. If, as sometimes hap-"pens, broader statements were made by way of "argument or otherwise than were essential to the "decision of the questions presented, they are the

" *dicta* of the writer of the opinion and not the " decision of the Court. A judicial opinion, like " evidence, is only binding so far as it is relevant, " and when it wanders from the point at issue it " no longer has force as an official utterance."

Colonial City Traction Co. *vs.* Kingston R. R. Co. (1897), 154 N. Y., 493, 495.

See, also, Stokes *vs.* Stokes (1898), 155 N. Y., 581, 594.

III.—EJECTMENT AGAINST THE COMPTROLLER.

This is the remedy which we are seeking to assert in this action.

It rests upon a statute of 1885—chapter 453—which in a partial revision of New York statutes in regard to taxation became section 13 of chapter 711 of Laws of 1893 (Appendix, pp. 86, 104).

" Sec. 93. From and after the advertisement, once " a week for three successive weeks, of a list of " wild, vacant or forest lands, to which the state " holds title from a tax sale or otherwise, in one or " more newspapers to be selected by the comp- " troller, published in the county in which such " lands may be located, all of such wild, vacant or " forest lands shall be deemed, and are hereby " declared to be, in the actual possession of the " comptroller of this state; and such possession " shall be deemed to continue until he has been " dispossessed by the judgment of a competent " tribunal."

This statute was passed on the same day as the six months limitation law—June 9, 1885. It was plainly intended to furnish a remedy to the land owner as against the State during the running of the new limitation law. It is equally plain that such remedy did not exist until the Comptroller acted and published the notice required. This he did not do until December,

1894 (Record, p. 16). This action was begun immediately thereafter (Record, p. 17).

## FIFTH.

**The defects shown to exist in the tax sales were jurisdictionnl and beyond the reach of the Act of 1885, assuming it to be valid.**

The act in question—chapter 448 of 1885, revised as chapter 711 of 1893, section 12—does not attempt to cure "jurisdictional defects." A tax sale void by reason of such defect remains void notwithstanding the statute.

Ensign *vs.* Barse (1887), 107 N. Y., 329.
Joslyn *vs.* Rockwell (1891), 128 N. Y., 334.
People *vs.* Turner (1895), 145 N. Y., 451.
Ne-ha-sa-ne Park Assn. *vs.* Lloyd (1896), 7 App. Div., 359.
Marsh *vs.* Ne-ha-sa-ne Park Assn. (1896), 18 Misc., 314; reversed, 25 App. Div., 34.

In the revision of 1893, the qualification or limitation which had been read into the Act of 1885 by the Court was recognized and expressed in words leaving past tax sales open to attack by reason of "any defect in the proceedings affecting the jurisdiction upon constitutional grounds" (see chap. 711 of 1893, sec. 12, Appendix, p. 104).

The New York cases do not define with any accuracy the meaning of the term "jurisdictional defect."

In *Ensign* v. *Barse* (1887), 107 N. Y., 329, a statute intended to validate tax sales in two counties of the State only was before the Court of Appeals.

FINCH, *J.*, says (p. 337):

> "The counsel on both sides agree as to the "legitimate range of a curative statute. They

"agree that a retrospective statute curing defects "in a legal proceeding where they are in "their nature irregularities only and do not "extend to matters of jurisdiction, is not void "on constitutional grounds; that if the thing "wanting or omitted, which constitutes the defect "is something, the necessity for which the Legis- "lature might have dispensed with by prior "statutes, or if something has been done or done "in a particular way which the Legislature might "have made immaterial, the omission or irregular "act may be cured by a subsequent statute. We "see no reason to disagree with the counsel in "this general statement of the law, at least for "present purposes, though it may not be above "criticism or beyond exception. The act of 1882 "does not on its face purport to cure jurisdictional "defects. It raises a conclusive presumption of "regularity, but leaves the question of the assessor's "jurisdiction and authority unaffected. * * * "We should, therefore, disregard such defects "in the proceedings as are not jurisdictional, but "founded upon acts or omissions wholly within "the power of the Legislature to have dispensed "with or treated as immaterial."

It was evidently intended by the Court to adopt the rule enunciated by Judge Cooley, and approved by this Court, with reference to *inchoate tax proceedings*, in *Mattingly* vs. *District of Columbia* (1878), 97 U. S., 687.

In *Joslyn* vs. *Rockwell* (1891), 128 N. Y., 334, it was held that the Act of 1885—the act now under consideration—was not different in its essential features from that passed upon in *Ensign* vs. *Barse*, and it was accordingly held that the assessment as non-resident of lands actually occupied was a "jurisdictional defect," which the Statute of 1885 did not cure.

In *People* vs. *Turner* (1895), 145 N. Y., 451, the construc-

tion given the statute in *Joslyn* vs. *Rockwell* was approved. It is, therefore, settled law that the Act of 1885 does not extend to tax sales which were void by reason of any jurisdictional defect in the proceedings.

In the present case the following defects were, we claim, of a jurisdictional nature:

1. *The sale of the whole tract of land in question for the aggregate unpaid taxes of several years, when during one or more of those years a part of the tract sold was not assessed or taxed at all.*

2. *The sale as one tract of two or more parcels separately assessed.*

3. *The assessment of taxes by a description so uncertain as not to identify the parcel of land taxed.*

4. *Treating the land on the sale as already the property of the State and denying opportunity for competitive bidding.*

The first two of these defects are so far similar that they may be considered together.

## I.

**The sale in 1877 of the whole quarter as one tract for the aggregate taxes of 1866, 1867, 1868, 1869 and 1870 when the taxes of 1868, 1869 and 1870 were assessed against two separate and distinct parcels of the quarter, while another parcel of the quarter was not assessed or taxed at all, was illegal and void, and such mode of sale was a jurisdictional defect.**

The bill of exceptions shows that, after defendant had given in evidence the deed based on the tax sale of 1877, plaintiff, in rebuttal, proved that at the tax sale of 1877 the whole quarter, containing 7,500 acres, was

sold as one parcel for the aggregate unpaid taxes of 1866–1870, inclusive, amounting, with interest and costs, to $2,756.40; that the taxes of 1866 and 1867 were levied upon the whole quarter as a single and distinct tract of land; that in each of the years 1868, 1869 and 1870 the whole quarter was not assessed or taxed; that so much as was assessed consisted of two parcels, one containing 5,285 acres and described as the N. W. ¼ of Township 24 "excepting 1,000 acres "lying in the northwest corner; also 1,215 acres which "is water, leaving 5,285 acres"; the other parcel described as "1,000 acres lying in the northwest corner "of the northwest quarter." The balance of the quarter, 1,215 acres, was not assessed or taxed in either of the years 1868, 1869, 1870 (Record, p. 20, 21).

The plaintiff requested the Court to rule as matter of law material to these facts:

*First*—Assuming that the sale by the Comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, which taxes were assessed against separate and distinct parcels of the tract sold, such sale was not authorized by law in 1877. Such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void, and is not cured or validated by chapter 448 of the Laws of 1885 or chapter 711 of the Laws of 1893.

The Court refused to so rule, and plaintiff excepted.

*Second*—Assuming that the sale by the Comptroller of the tract of land in controversy was made as one parcel for the aggregate unpaid taxes of several years, during one or more of which years a part of the land sold was not assessed or taxed at all, such sale was not authorized by law in 1877; such mode of sale is a jurisdictional defect in the proceedings, and a sale so made is void, and is not cured or val-

idated by chapter 448 of Laws of 1885 or chapter 711 of Laws of 1893.

The Court refused to so rule, and plaintiff excepted.

*Third*—Assuming that the proof shows a sale by the Comptroller of a tract of land as one parcel for the aggregate unpaid taxes of several years, some of which taxes were assessed against the whole tract sold and others against a part of the tract only, such sale was not authorized by law in 1877; such mode of sale would be a jurisdictional defect in the proceedings, and a sale so made is void, and is not cured or validated by chapter 448 of Laws of 1885 or chapter 711 of Laws of 1893.

The Court refused to so rule, and plaintiff excepted.

Record, pp. 23, 24.

Error is assigned upon each of these refusals.

Record, pp. 32, 33.

It is one of the axioms of tax law that land can only be sold for taxes which it is legally liable to pay.

Black on Tax Titles, 2d ed., sec. 228.

In the present case the 1,215-acre parcel which was excepted from the assessment, and consequently not taxed at all in the years 1868, 1869 and 1870, was sold with the other lands to pay the taxes of those years. It is manifest that the 1,215-acre parcel owed the State nothing as regards those taxes, and, of course, could not be sold for their non-payment.

A sale of land for taxes must, we think, be wholly good or wholly bad. It is indivisible, and unless it can be sustained as a whole it cannot be sustained in part. It is also manifest that the sale of the 1,215-acre parcel for the unpaid taxes of five years cannot, *independently*

*of curative legislation*, be justified because as to two of those years it was legally liable.

People *vs.* Hagadorn (1887), 104 N. Y., 516.

It follows, therefore, that the sale of the whole quarter in 1877 for taxes which were not a lien upon the whole quarter was illegal and void. It is not different in principle from the case of the assessment of an entire tract followed by payment of a proportionate part of the tax upon a specific part of the land and a sale of the entire tract for the unpaid balance. Such a sale is void *in toto*.

Black on Tax Titles, 2d ed., sec. 258.

Marsh *vs.* Ne-ha-sa-ne Park Association (1896), 18 Misc., 314; Reversed, 25 App. Div., 34.

The rule upon this point is thus stated by Mr. Black:

> "As a general rule, the whole of a tract of land "against which taxes are assessed in gross must "be sold for non-payment of such taxes. But "the statutes sometimes permit the owner of a "specified and determinate fraction of the tract (or "even, in some cases, of an undivided interest in "it) to discharge the tax lien as respects that "portion by paying a proportionate share of the "gross tax. When advantage is taken of such a "provision, a sale ef the entire tract for taxes "assessed upon the whole, after the taxes have "been paid upon a part of it, is void and passes "no title."

So also the action of the Comptroller in selling as one parcel two or more parcels which had been separately assessed and taxed, was wholly illegal, and rendered the sale null and void when it was made.

The general rule in regard to the sale of lands for unpaid taxes is that such sale must be made as the

land has been assessed and taxed, and the practice of bunching into one parcel two or more lots which have been separately assessed, and selling them as one for the aggregate tax, has been uniformly condemned.

In Blackwell on Tax Titles, 5th edition, section 526, it is said:

> "A sale of several distinct parcels or subdi-
> "visions of land, separately assessed or in fact
> "distinct, *en masse*, and for a gross sum, is void."

In Cooley on Taxation the rule is expressed as follows (2d ed., p. 493):

> "The sale should also be made of the parcels of
> "land as they appear in the list. * * * To
> "group lands in the sale which are assessed as sepa-
> "rate interests is incompetent, even though they
> "be owned by the same person. Each parcel is
> "chargeable with its own taxes, and is to be re-
> "deemed by paying them; but such a joint sale
> "charges it with the tax upon the other also, and
> "is like issuing one execution upon several judg-
> "ments, and selling jointly the lands which are
> "charged with separate liens. It may or may not
> "be important to the owner that he have the op-
> "portunity of a separate redemption, but the fact
> "that it possibly may be so is sufficient reason
> "why the law should protect the right."

The statute of this State in pursuance of which the sale was made expresses the same rule:

> "On the day mentioned in the notices, the
> "comptroller shall commence the sale of such
> "lands, and shall continue the same from day to
> "day, until so much of each parcel so assessed,
> "shall be sold, as will be sufficient to pay the
> "taxes, interest and charges thereon."
>
> Chap. 427, Laws of 1855, sec. 44; Appendix, p. .

This statute has been four times before the courts of the State.

National Fire Ins. Co. *vs.* McKay (1867), 5 Abb. Pr., N. S., 445.
Thompson *vs.* Burhans (1874), 61 N. Y., 52.
Turner *vs.* Boyce (1895), 11 Misc., 502.
Marsh *vs.* Ne-ha-sa-ne Park Association (1896), 18 Misc., 314; Reversed, 25 App. Div., 34.

In *National Fire Ins. Co.* vs. *McKay* (1867), 5 Abb. Pr. N. S., 445, the validity of a tax sale of land in Buffalo was before the General Term of the Superior Court of that city. The facts were these: In 1837 a lot of land forty-two feet front by seventy feet deep was assessed and the tax not paid. In 1840 the lot was assessed as forty feet front. In 1852 the Comptroller sold the lot as forty-two feet front for the aggreate taxes of 1837 and 1840.

MASTEN, *J.* (p. 448):

"By the statute, as I read it, the Comptroller is "to put up for sale each parcel of the land assessed "for the amount of the taxes, interest and charges "upon it, and to strike off to the bidder who offers "to take the smallest portion of the parcel and pay "such amount, the portion so offered to be taken. "By the course pursued in this case, the forty-two "feet front by seventy feet deep not chargeable "with the tax of 1840 were sold for it. And the forty "feet by seventy feet were sold for the tax which "was chargeable upon it and other lands. This, "I think, was erroneous. By reference to the "provisions in the same article of the statute, it "will be seen that this is material as affecting the "amount to be paid upon redemption. To redeem "the whole of the lands sold, the purchase money "and interest are to be paid. To redeem any "specific part of the lands sold, such proportion

" of the purchase money and interest is to be
" paid as the quantity sought to be redeemed
" bears to the whole quantity sold. In the case
" under consideration, the whole forty-two feet
" by seventy feet were sold. To redeem the two
" feet by seventy feet, there would have to be paid
" two forty-two parts of the tax of 1840, and the
" interest, etc., and which were not chargeable
" upon them."

In *Thompson* vs. *Burhans* (1874), 61 N. Y., 52, the question came before the Commission of Appeals. The land there in controversy was 4,000 acres in the north part of Township 47, Totten & Crossfield's Purchase. The plaintiff claimed under a Comptroller's deed based on the tax sale of 1834 for taxes of 1828 and 1830.

In 1828 the township was assessed as twenty-four lots of 1,000 acres each. In 1830 it was assessed in four quarters of 6,300 acres each.

The Comptroller sold the four quarters of the township separately for the taxes of both years, charging each quarter with one-fourth of the entire tax of 1828.

EARL, *C.*, says (p. 64):

" The statute (1 R. S., p. 408, sec. 52) provides
" that whenever any tax charged on lands returned
" to the Comptroller shall remain unpaid for two
" years, he shall proceed to advertise and sell such
" land. He must advertise and sell the land by
" lots, and descriptions, as returned to him; section
" 63 provides that on the day of sale he shall sell
" so much of each parcel assessed as will be suffi-
" cient to pay the taxes, interest and charges; and
" a subsequent section provides, that if no person
" shall bid the sum required, he shall bid in the
" land for the State. On the day of this sale the
" Comptroller proceeded to sell and sold the whole
" township in four undivided quarters, separately,
" for the tax of both years, claiming the same

" amount of tax to be due on each quarter, to wit,
" the sum of $24.77, and yet the tax of 1828 was
" assessed upon twenty-four separate lots of 1,000
" acres each, and the tax was not the same upon
" each lot. The sale for the tax of 1828 could not
" be made in quarters, but should have been made
" in lots, as assessed."

In *Turner* vs. *Boyce* (1895), 11 Misc., 502, the question was squarely presented. Lot 86, except northwest quarter, was sold in 1877 for the taxes of 1861 to 1870 inclusive. The taxes of each of those years, except 1862 and 1870, were assessed against the three-quarters of the lot sold. In 1862 the east half only was assessed and returned unpaid. In 1870 the south half was assessed as one parcel, and the northeast quarter was assessed as another and separate parcel.

The sale of the three-quarters of the lot as one parcel was held to be illegal and invalid.

KELLOGG, *J.*, says (p. 505):

" The whole scheme of taxation and collection
" of taxes is based upon plain, sound principles.
" It cannot be reasoned from any language of the
" law, or by any implication to be drawn from such
" language, that parcels of land separately assessed
" and separately taxed may be bunched with other
" parcels and sold in lump. Much less does the
" law authorize such a sale where it is apparent
" that such a sale makes one parcel stand for the
" taxes levied only upon other parcels. * * *
" It is a violation of the plain principle that one
" man's land cannot be sold to pay the taxes upon
" another's, or, which is the same thing, one parcel
" of land cannot be sold to discharge a tax upon
" another parcel, no matter how small that tax may
" be."

The facts of the case now under examination furnish an excellent illustration of the injustice that would be

done to the land-owner if such a mode of sale were sanctioned by law.

The statute under which lands are sold for taxes provides that any person claiming a specific part of any tract sold may redeem that part by paying such proportion of the purchase money and interest as the number of acres sought to be redeemed shall bear to the whole number of acres sold (chap. 427 of Laws of 1855, sec. 53; Appendix, p. 50). It does not appear by the bill of exceptions whether the different parcels of the land sold were all owned by the same person at the time the taxes were unpaid and the sale had. It is manifest that the ownership might be different, and even if not, the owner might redeem one parcel and not the other. The owner of the 1,215 acres of land under water had the right to redeem that parcel from the sale, but the statute required him to pay that proportion of the amount for which the sale had been made which the number of acres in that parcel bore to the whole number of acres sold, or in this case 16 2/10 per cent.

The whole quarter was sold for $1,484.59, exclusive of interest and costs. Hence the amount to be paid on redemption of the 1,215 acres would have been $240.50 (1,484.59 × .162 = $240.50). But this parcel was not taxed at all in 1868, 1869 or 1870, and had the land been sold as assessed, this parcel would have contributed to the taxes of 1866 and 1867 only. The taxes of these two years were $806.25, and the amount which would have been paid on redemption would have been $130.61 ($806.25 × .162 = $130.61).

It remains to be considered whether the action of the Comptroller in selling the whole quarter as one parcel to enforce payment of the aggregate of all taxes levied against the different parcels, and in selling the 1,215-acre parcel for the taxes of 1868, 1869 and 1870, which were imposed on the other portion of the quarter only, constituted a jurisdictional defect in the proceedings.

Could the Legislature, by prior enactment, *all other*

*provisions of law remaining as they are*, have authorized such procedure?

The New York Court of Appeals in *Ensign* vs. *Barse* (1887), 107 N.Y., 329, 338, while accepting for the purpose of that case the rule that the Legislature might, by a retroactive law, cure any defect of ommission or commission which it might have authorized prospectively, at the same time suggested that the rule would be found, on closer examination, to require qualification or limitation. It would seem to be a proper and necessary limitation upon that rule that the result of the retroactive law shall not be to impose upon the land-owner a burden different from and greater than *that of which he was notified during the pendency of the tax proceedings.* If it does, and to that extent deprives him of property without an opportunity to be heard, its validity may well be questioned.

It is to be borne in mind that tax proceedings against non-resident lands are *in rem*, and do not in form deal with the owner, at the same time it is the owner who in the end must pay or lose his property; and the statute of New York recognizes very clearly that what is one parcel of non-resident land as regards taxation, may be in fact the subject of divided ownership (see chap. 427 of Laws of 1855, secs. 51-56; Appendix, pp. 49, 50).

We take it to be settled law that the constitutionality of a statute is to be tested not so much by what *is* done as by what *may be done* under it (Stuart *vs.* Palmer (1878), 74 N. Y., 183; Colon *vs.* Lisk (1897), 153 N. Y., 188, 194). The present record is silent as to the actual ownership of the different parcels of the quarter in question during the years 1866-1870, but plainly they might have been the subject of separate ownership.

If the procedure adopted at the 1877 sale of selling *en masse* was authorized in case of a single ownership, it would be equally authorized in case the ownership was

divided, for the tax law contains no machinery to enable the officer selling to ascertain the owners.

The owner of the 1,215-acre parcel knew that this parcel of land owed the State nothing for the taxes of 1868, 1869 and 1870, but that parcel did owe the State its proportion of the taxes of 1866 and 1867 imposed on the whole quarter. Existing laws, however, required that any sale of the whole quarter should be confined to the taxes imposed on the whole, and those laws also gave to the land-owner the right of paying the tax, through redemption at any time within two years of a sale on paying ten per cent. interest and costs (chap. 427 of 1855, secs. 44, 50, 53 ; Appendix, pp. 47, 49, 50).

It is manifest that until the sale by the Comptroller no claim had been made by the State for taxes of 1868, 1869 or 1870 as against the 1,215-acre parcel. It had been intentionally excepted by the taxing officers, and upon its exemption from such taxes the owner had a right to rely. But by the mode of sale adopted by the Comptroller, in connection with existing laws, this parcel of land was charged with a part of the tax of those years unpaid on other lands, for it was only on condition of such payment that he could redeem. No notice had been given to him at any stage of the proceedings that this parcel of land would be called on to make such payments. It is true the owner knew, or was bound to know, that his parcel of 1,215 acres must contribute to the taxes of 1866 and 1867. It may very well be that as to the assessment for those years the owner was content, while as to 1868, 1869 and 1870 the valuation was unfair and oppressive, but such unfair assessment did not concern him because he was not affected by it—his lands were excepted.

At what stage of the proceedings, therefore, was the owner of the 1,215-acre parcel notified of a claim against his property for taxes of 1868, 1869 and 1870, and given an opportunity to be heard as to the amount of such claim? The ordinary notices did not concern

him, for he was at the same time notified that his land was excepted. The Comptroller's notice of sale did not concern him for he had a right to assume that that officer would do his duty and sell as directed by the law; and further, the Comptroller has no power whatever as regards the amount of the tax—he can no more change the amount of a tax returned to him than a sheriff can change the figures in his execution. The Comptroller may reject a tax entirely, but if he accept it and proceed to enforce it he must enforce it as returned to him.

It may be said that the owner of the 1,215 acres might have saved his property even after the sale by redeeming. Such a remedy, as was said by the New York Court of Appeals in *Stewart* vs. *Crysler* (1885), 100 N. Y., 378-384, "only tended to enforce and perpetuate the wrong," and such remedy was granted only on condition of contributing to taxes the correctness of which he had had no opportunity to question.

We are not unmindful of the fact that the Appellate Division of the Supreme Court of New York has recently held in *Marsh* vs. *Ne-ha-sa-ne Park Association* (1898), 25 App. Div., 34, that where taxes had been assessed against a tract of land for four years and the taxes for two of those years actually paid as against a part of the tract, and the whole tract sold for the unpaid balance of all the taxes, the defect was not jurisdictional, but was cured by the Act of 1885. This decision was made by a divided court, which reversed that of the trial Court. The prevailing opinion proceeds upon the ground that because certain taxes existed for which a sale might lawfully be made, therefore there was jurisdiction to sell the land for other and different taxes—taxes for which the land was in no way liable—simply by tacking them onto those taxes for which it was liable, and calling it a merely irregular sale. We can only deny this doc-

trine and insist that the dissenting opinion is the correct law.

PUTNAM, *J.*, dissenting, says (p. 49):

"The Comptroller had a right to sell the North-
" east quarter for the taxes of 1838 and 1839, but
" not for those of 1836 and 1837, which had been
" paid on said premises, but remained unpaid on
" other portions of the township, and under the
" law was a lien on *the balance of the township*
" *only*. Such being the situation in 1843, could the
" Legislature previous to the sale have author-
" ized the Comptroller to sell the plaintiff's land
" for taxes he did not owe—for the taxes charged
" against the land of another party? It does not
" require any argument or citation of authority to
" show that the Legislature had no such power.
" The owner of the Northeast quarter had paid
" his taxes for 1836 and 1837 under the provisions of
" the existing law. The Legislature could not have
" authorized the Comptroller to sell the lands of
" such owner for another man's taxes. Had it
" attempted to authorize such a procedure, its
" action would have been a violation of the consti-
" tutional rights secured to the owner of the
" land."

In the present case the owner of the 1,215-acre parcel stands in the same position as the owner who had paid taxes in the Ne-ha-sa-ne Park case. In the one case the land was relieved from liability to sale by payment: in the other, it was not liable because never taxed. But in both cases land has been sold for taxes which it did not owe and was not liable to pay. In other words, a land-owner has been compelled to pay, through the sale of his property, taxes which he had no opportunity to contest before the sale,—taxes which he was never notified would be enforced against his property, and in which, up to the moment of sale, he

had no interest or concern, because they were not imposed upon him or his property. Since, then, the result of validating the sale of 1877 would be to compel the payment of a tax out of property not originally liable to pay it, and this, without notice to the owner, that such charge upon his property was contemplated, it follows that any law authorizing such result would be unconstitutional as not due process of law.

Winona & St. Peter Land Co. *vs.* Minnesota (1895), 159 U. S., 526, 537.

In the case cited BREWER, *J.* says (p. 537):

> "Questions of this kind have been repeatedly
> "before this Court, and the rule in respect thereto
> "often declared. That rule is that a law authoriz-
> "ing the imposition of a tax or assessment upon
> "property according to its value does not infringe
> "that provision of the Fourteenth Amendment to
> "the Constitution, which declares that no State
> "shall deprive any person of property without
> "due process of law, if the owner has an oppor-
> "tunity to question the validity or the amount of
> "it either before that amount is determined or in
> "subsequent proceedings for its collection."

Applying this rule to the present case, at what stage of the proceedings did the owner of the 1,215-acre parcel of land covered by water have an opportunity of showing that such parcel was not equal in value, acre for acre, to that portion of the township covered with timber? Had he sought to raise such question before the assessors or the Board of Supervisors, the short answer would have been that it did not concern him, as his land was wholly excepted. Neither the collector nor the Comptroller had any power to change valuations or correct assessments. Had the Comptroller obeyed the law in making the sale the owner would never have had an interest in the question, for he would never have been called upon to

pay anything toward the taxes of the three years for which his land was not assessed. But in the end, and when it was too late to question the assessment, the owner of the untaxed parcel finds it sold in such manner and form that he must either lose it entirely or contribute to taxes never levied against his land and upon a basis of value to which he never even by silence consented. So also the owner of the 1,000-acre parcel in the northwest corner of the quarter was never notified in any way that his property would be called upon to contribute to the tax upon the 5,285-acre parcel, and this upon the basis of relatively equal value. It may be that in this particular case the owner of the 1,000-acre parcel might have redeemed from the unlawful sale for less than the amount of the taxes lawfully imposed upon that parcel, and that it was the State which was prejudiced by the illegal sale. But it is manifest that this is merely an accident and that conditions might be such that the sale of separate parcels *en masse* should impose serious burdens upon the owner of one of these parcels, as in this case it did with reference to the 1,215-acre parcel. In fact such mode of sale practically nullifies the objects for which the law secures to the owner opportunity to be heard as regards his own assessment, by compelling him in the end to come in on substantially the same basis as the owners of the other parcels of the tract whose assessments have been all wrong in the beginning, but which at that time did not concern him. It may be said that the owner may prevent all this by paying his tax when due. But the State in putting the tax upon him allowed him until the expiration of the time to redeem in which to pay, charging him with 10 per cent. interest if he elected to accept the credit. After he had elected to take the time allowed by law and pay for the privilege the State had no right to change the principal amount of his indebtedness without notice to him. But this is what it does if by

retroactive legislation it sanctions the mode of sale adopted in this case.

It follows, we contend, that the act of the Comptroller in selling the whole quarter for the unpaid taxes of five years when as to three of those years a portion of that quarter had not been taxed at all, was a jurisdictional defect in the proceedings, and the Trial Court erred in refusing the second request submitted by the plaintiff (Record, pp. 23, 24). And the second assignment of error is well taken (Record, p. 32).

So also the Court erred in refusing to rule that the sale as one parcel of what had been assessed and taxed as separate parcels was also a jurisdictional defect. And the first and third assignments of error are well taken (Record, pp. 32, 33).

## II.

**The taxes of 1868, 1869 and 1870 were based upon a description wholly insufficient to identify the land sought to be taxed, and such uncertainty of description was a jurisdictional defect in the proceedings.**

The Trial Court, at the request of the plaintiff, did rule that

> " An assessment of non-resident land for taxa-
> " tion must describe the land to be taxed, so that
> " the parcel taxed can be identified and distin-
> " guished, and a failure to so describe the land to
> " be taxed is a jurisdictional defect in the proceed-
> " ings and if the land be sold by the Comp-
> " troller to enforce payment of taxes so assessed,
> " the sale is void and is not cured or validated by
> " chapter 448 of the Laws of 1885, or chapter 711
> " of the Laws of 1893 " (Record, p. 24).

The Trial Court, however, refused to hold that the description used in levying the taxes of 1868, 1869 and

1870 was insufficient to identify the parcel taxed, and to this refusal exception was duly taken (Record, p. 24).

The question comes into the case in this way. The local authorities in those years treated the Northwest Quarter of the Township—the tract in question—as made up of three separate and distinct parcels. Namely, a parcel of 1,000 acres in the northwest corner, a parcel of 1,215 acres of water, and a parcel of 5,285 acres, described as "Township 24, Great Tract 1, "Macomb's Purchase, N. W. ¼, excepting 1,000 acres "lying in the N. W. corner; also, 1,215 acres which is "water, leaving 5,285 acres" (Record, p. 21).

Upon the trial the plaintiff gave evidence tending to show that the area of land covered by water in the quarter, exclusive of 1,000 acres in a square form in the northwest corner, was materially less than 1,215 acres, or 1,035 acres; the defendant gave evidence to show that such area was materially greater than 1,215 acres, being 1,284 acres.

Under these circumstances, plaintiff asked the Court to rule that if it should find "that the area of land "covered by water in the northwest quarter, outside "of the 1,000 acres in the northwest corner, was sub-"stantially more or less than 1,215 acres, then such "description was not sufficient to identify the parcel "assessed with reasonable certainty, and the taxes "based upon such assessment were void and the sale "of 1877 was also void. Such assessment was a "jurisdictional defect in the proceedings and the sale "was not cured or validated by chapter 448 of Laws "of 1885, or chapter 711 of Laws of 1893." The Court refused to so rule and plaintiff excepted (Record, p. 24).

Taking this refusal in connection with the previous ruling, to the effect that uncertainty of description was a jurisdictional defect, and it is plain that the Court was of opinion that the description challenged in the case was a sufficient description.

Inasmuch, therefore, as uncertainty of description was assumed to be a jurisdictional defect, but the description actually used held sufficient, it remains to consider the ruling in this latter aspect.

There are some propositions of law relating to the description of property in tax proceedings which are well settled.

(1) Certainty of description is indispensable, in all proceedings to divest the title of a citizen for non-payment of taxes or otherwise *in invitum*.

Tallman *vs.* White (1848), 2 N. Y., 66–70.
Matter of N. Y. C. & H. R. R. R. (1877), 70 N. Y., 191.
Matter of N. Y. C. & H. R. R. R. (1882) 90, N. Y., 342.
Zink *vs.* McManus (1890), 121 N. Y., 259.

(2) The rule requiring certainty of description applies with peculiar force to the assessment-roll as that is the foundation on which all the proceedings to levy and enforce a tax must rest.

Blackwell on Tax Titles, 5th ed., sec. 224.
Black on Tax Titles, 2d ed., sec. 112.
Stout *vs.* Mastin (1891), 139 U. S., 151.
Tallman *vs.* White (1848), 2 N. Y., 66.
Greene *vs.* Lunt (1870), 58 Me., 518.

In *Blackwell on Tax Titles*, 5th ed., it is said (sec. 224):

> " An accurate and a pertinent description of the " land embraced in the list is essential to its valid- " ity. The object of this requirement is, to enable " the owner to ascertain from the list itself that " the tax charged against him has been assessed " upon his land, and not upon that of a stranger. " Besides, the list is the foundation of all the sub- " sequent proceedings. Each document wherein " the land is designated must necessarily depend " upon the list for the accuracy of its description.

"A false or mistaken description in the list runs "through the warrant to collect, the advertise- "ment, return, certificate, and deed. And even "when an error is discovered and corrected in "either of the subsequent documents, a defective "listing is not cured by the amendment. It fol- "lows that unless a true description is contained "in the list, the officer has no guide in advertising, "selling, and conveying the land; the former "owner cannot know that his land is in jeopardy, "and be able to save it by paying the tax; nor "can the purchaser at the tax sale find and locate "the land after his purchase."

In *Black on Tax Titles*, sec. 112, it is said:

"The rule announced in the preceding sections "—that real estate must be assessed, for purposes "of taxation, in the name of the true owner, if he "can be discovered—is not the only safeguard "which the law provides for the protection of the "property-owner. In addition to this it is required "that the assessment-roll shall contain a sufficient "description of each parcel taxed. The object of "this provision, indeed, is threefold. First, it is "designed to inform the owner of the claim "upon his property; secondly, that if the taxes "are not paid, intending purchasers may know "what property will be offered for sale; and third- "ly, that a proper deed may be made to the ven- "dee. That a tax sale of property that is mis- "described, or not described, in the assessment-roll "will be wholly invalid, and will pass no title to "the purchaser, is conclusively established upon "the authorities."

In *Tallman* vs. *White* (1848), 2 N. Y., 66, RUGGLES, *J.*, says (p. 70).

"An accurate designation or description of the "land assessed, is essential to the validity of the

"assessment. The assessment of non-resident "lands is made with the ultimate view of collect- "ing the tax by advertisement and sale of the "land, if it should not be voluntarily paid. The "Comptroller's sale is a rigorous proceeding. It "divests the owner of his title without his consent, "and often for a very trivial consideration; and the "Legislature has therefore shown a cautious solic- "itude that it should not be done without his "knowledge. * * * The assessment must "therefore contain a true designation or descrip- "tion of the land to be sold, for two reasons: "first, in order that the purchaser at the sale "may be able to find and locate the land after his "purchase; and secondly, in order that the owner "may know that his land is advertised for sale or "redemption, and be able to save it by paying the "tax."

(3) A description which would be sufficient in a voluntary deed as between grantor and grantee may be wholly insufficient in tax proceedings. The reason is that a voluntary deed is the expression of the intent of the parties to it, and any words from which that intent can be ascertained may be sufficient. But the landowner whose title is to be divested by hostile tax proceedings is not a consenting party; he intends nothing.

Blackwell on Tax Titles, 5th ed., sec. 226.
Devlin on Deeds, sec. 1405.
Stout *vs.* Mastin (1891), 139 U. S., 151.
Tallman *vs.* White (1848), 2 N. Y., 66, 72.

In *Stout* vs. *Mastin* (1891), 139 U. S., 151, BREWER, *J.*, says (p. 152):

"Surrounding circumstances may sometimes "sustain an imperfect description in a voluntary "deed by a grantor, but seldom one made in host- "ile tax proceedings."

(4) Tax proceedings must be certain in themselves, and cannot be aided by extrinsic proof.

Black on Tax Titles, 2d ed., secs. 406, 407.
Blackwell on Tax Titles, 5th ed., sec. 227.
Stout *vs.* Mastin (1891), 139 U. S., 151.
Tallman *vs.* White (1848), 2 N. Y., 66, 72.
Curtis *vs.* Supervisors (1867), 22 Wis., 167.
Orton *vs.* Noonan, (1868), 23 Wis., 102.
People *vs.* Mahoney (1880), 55 Cal., 286.
Bowers *vs.* Andrews (1876), 52 Miss., 596.

In *Black on Tax Titles*, the rule in this regard is thus expressed (2d ed., sec. 406):

> " Where the description of land in a tax deed is " not sufficient and complete in itself, it becomes " important to know how far the courts will lend " it their aid, by the way of intendments and pre- " sumptions, and under what circumstances extra- " neous evidence will be admissible to clear up " ambiguities and identify the land. And in the " first place, keeping in mind the official nature of " the whole transaction and the necessity of perfect " accuracy and strict adherence to form, there is " no difficulty in reaching the conclusion that, in a " tax deed, words necessary to identify the land " will not be supplied by intendment, nor will any " part of the description be rejected as surplusage."

In *People* vs. *Mahony* [1880] 55 Cal., 286, the words of the description were, "bounded North by the lands of Regan and others."

Ross, *J.*, said (p. 289):

> " A more uncertain and indefinite boundary than " this can scarcely be conceived. Who the 'others' " are whose lands are said to bound the tract at- " tempted to be assessed does not appear upon the " face of the assessment, and extrinsic evidence,

" as we have seen, cannot be resorted to for the " purpose of showing."

In *Bowers* vs. *Andrews* [1876] 52 Miss., 596, the words of the deed were, " Lot and residence in Madi- " son Station, for the taxes assessed to the reputed " owner thereof, Thomas McMahon, for the year 1871." SIMRALL, *C. J.*, said (p. 602):

" The deed of a tax collector who sells *in invi-* " *tum*, by virtue of power conferred by law, must " in itself be sufficient to convey the thing sold. " The deed cannot be re-formed so as to help out a " defective description. There is no '*aggregatio* " *mentium*' which the instrument has mistaken."

(5) When in tax proceedings the officials attempt to exclude from their operation a specific part of the tract otherwise proceeded against, the part excepted must be described with certainty or the proceedings will be void.

Black, Tax Titles (2d ed.), sec. 405.
Marsh *vs.* Ne-ha-sa-ne Park Association (1896), 18 Misc., 314; Reversed 25 App. Div., 34.
Johnson *vs.* Ashland Lumber Co. (1881), 52 Wis., 458.

Black says (sec. 405):

" It is also well settled that a description of the " property as 'part' of a certain lot or tract, or as " so many acres of a certain tract, or as a certain " tract 'less' or 'excepting' a given number of " acres, is so uncertain and so lacking in precision " that it will avoid the deed.

It now remains to apply these principles to the present case.

We contend that the description contained in the rolls of 1868, 1869 and 1870 was fatally defective because neither of the excepted parcels—the 1,000 acres

in the N. W. corner and 1,215 acres water—is so described that it can be located.

The first exception is simply "1000 a. lying in the N. W. corner." It is not possible to say from these words alone what part of the quarter was assessed and what excepted.

What is the shape of this excepted parcel? Is it a square, a parallelogram or a triangle? It is evident enough that the number of different locations each of which will answer the description is infinite.

In *Marsh* vs. *Ne-ha-sa-ne Park Association* (1896), 18 Misc., 314, precisely the same question was presented. The validity of a tax deed was in controversy. The description in the deed was: "Eleven thousand and ten acres of land, being 'what remains of 20,000 being in "Long Lake after deducting * * *.' The North "East corner of the North East Quarter of the town- "ship two hundred and fifty acres."

KELLOGG, *J.*, says (p. 325):

> "I apprehend that no surveyor or civil engineer "could, with any degree of certainty, fix the bound- "aries of this parcel from this description. "Whether the form of the piece should be a tri- "angle, a square or a parallelogram it is impossi- "ble to say. The defendant says it is a parallelo- "gram—320 rods long and 125 rods wide—and so "says his expert Engineer Wood, but neither can "give any satisfactory reason. The engineer says "he could as well have locatedit in any other form. "* * * It is too plain to require argument, that "it is necessary to define with reasonable cer- "tainty the exception in order to define and locate "with reasonable certainty the land intended to "be conveyed."

It is true that this case has been reversed and a divided Appellate Division of the Supreme Court holds that a parcel of land excepted in a tax deed out of the

corner of the parcel described, is presumed to be laid out in a square form. The presumption sanctioned by this decision seems to be in conflict with the settled rule, that tax proceedings must be sufficient in themselves, and that words necessary to identify the land will not be added by intendment.

The words of O'BRIEN, *J.*, in *Zink* vs. *McManus* (1890), 121 N. Y., 259, 265, seem applicable to such a description:

> "There are but two boundary lines contained in "the description of the lands in the Comptroller's "deed. No land is actually inclosed by it. It is "impossible, from the description, to ascertain "the form or shape of the lot, or how far, either to "the west or to the south its actual boundaries "extend."

Such a description has been sustained in some States, where, by statute, land sold for taxes must be laid out in a square form.

> Newby *vs.* Brownlee (1885), 23 Fed. Rep. 320-323.

There is no such statute in New York.

The second exception in the assessment-roll is even more indefinite than the first. "Ex. 1215a, which is water." The evidence offered by plaintiff shows that the Northwest quarter of Township Twenty-four contains a part of Lower Saranac Lake; a part of Round or Middle Saranac Lake and a part of Little Weller Pond. It also appears from this evidence that the surface area of those bodies of water, so far as they are within the lines of the Northwest quarter, are as follows:

| | | |
|---|---|---|
| Lower Saranac Lake (including all islands) | 948 | acres. |
| Round or Middle Lake | 115 | " |
| Little Weller Pond | 20 | " |
| | 1,083 | " |

| | |
|---|---|
| From this should be deducted the area of the islands in the LowerLake and Round Lake..... | 48 acres. |
| Area of water..... | 1,035 " |

(Record, p. 22.)

It may be assumed that the land covered by the water of the lakes and ponds was excepted, but this is not enough; there remains 180 acres which were excepted and not taxed. Until they are located it is not possible to locate the parcel of land assessed.

The description is at best that of a definite tract of land, excepting an undefined and unlocated part. The addition of the word water to the 1,215 acres excepted wholly fails to identify the parcel, because there are not that number of acres to which the descriptive words applies, and that failing, the identification of the 5,285 acres fails also.

The defendant attempted to meet these facts by offering evidence tending to show that between 1860 and 1870 there was a dam across the outlet of the Lower Saranac Lake built by lumbermen for the purpose of holding back the water of the lake in the spring to aid them in driving logs; that when this dam was closed the level of the lake was raised from two to five feet, but that as the driving season advanced and the water was drawn off to run logs down the river the lake fell to about its normal level (Record, p. 23.) The effect of raising the level of the lake was, of course, to flood the swamps and low lands in its vicinity, the area of lands so flooded being from two hundred to two hundred and fifty acres (Record, p. 23).

This proof, instead of making certain the description of the 1,215 acres which were excepted, seems to us to make it still more uncertain. The Court is asked to include in the exception not only the 1,035 acres ordi-

narily covered with water, but also 250 acres of swamps and sloughs, covered with water at certain times and under certain conditions. If the Court accede to this and assume that the swamps and swales were covered with water when the assessments were made, then the defendant has proved too much, for on that theory there are 1,285 acres of land under water and the exception only relates to 1,215, and we are no nearer a certain location of the excepted parcel than we were before. Where is the 70-acre parcel covered with water which was taxed, and where is the 1,215-acre parcel which was not taxed? It is plainly impossible to say. Further than this, if it be assumed that the assessment-rolls were made out in the spring or early summer, when the water was high, then as the swamps and low ground around Little Weller Pond and along the river were largely covered with water at that season, they also must be added to the area of water in question (Record, p. 23).

The evidence offered by the defense on this point only adds a new element of uncertainty to the situation. It makes it appear that there are three sorts of land in the tract in question, viz. : land which is land ; land which is water ; and land which is sometimes one and sometimes the other ; and the Court is asked to guess whether by the term "water" the assessors of thirty years ago meant not only what that word would naturally mean, but also the swamps and swales which might or might not be water, depending on the condition of the dam.

We submit that under the circumstances shown by the proofs the word "water" is not sufficient to identify the excepted parcel of 1,215 acres, and the case stands just as if it had been omitted.

As instances of tax sales which have been held void by reason of uncertain description we refer to the following cases :

*Ronkendorff* vs. *Taylor* (1830), 4 Pet., 349:

"One-half of Lot No. 4 in Square No. 491."

*Bank of Utica* vs. *Mersereau* (1848), 3 Barb. Ch., 528, 583:

Eight hundred acres of land to be laid out in a square form as nearly as may be the northwest corner of 2,400 acres in Township No. 1 assessed to Garretson and described in the assessment as bounded on the south by Jonathan Mersereau and others; west by the town line; north by Rathbone and the town line and east by the Tioga river and Ryers and others (p. 547).

The description of the 2,400 acres was held so uncertain that the 800 acres could not be located.

*Zink* vs. *McManus* (1890), 121 N. Y., 259, 265:

"Part of Bird farm, 872 feet front, 290 feet north line "deep on the easterly side of Military road, commencing 918.60 feet northerly from Hertel avenue."

*People* vs. *Cone* (1874), 48 Cal., 427:

Tract described by metes and bounds "excepting "therefrom that portion of about 8,000 acres, sold by "Job Dye to F. W. Fratt and T. R. King."

CROCKETT, *J.* (p. 429):

> "It is impossible to ascertain from the assessment, on its face, what particular lands were intended to be assessed and what excepted. In order to determine with any reasonable certainty the particular tract assessed, it would be necessary to make a laborious search of the records, and possibly to invoke the aid of a surveyor."

*Hill* vs. *Mowry* (1856), 6 Gray, 551:

"Beginning at the southeast corner of the Episcopal "Church lot and running thence northerly to land of "said Mowry, thence running easterly on said Mowry's "land to land of said Hill, thence running southerly "to a street laid out by said Hill, thence to the first "bound."

SHAW, *C. J.* (p. 552):

"The Court are of opinion that the deed of the "collector, taking effect only as the execution of a "statute power, should be construed with some "strictness, so as to enable the grantee to identify "the land, and to enable the owner to redeem it. "On examination of the plan, we think this deed "fails in these particulars, and is void for uncer- "tainty."

*Tripp* vs. *Ide* (1854), 3 R. I., 51, 58:

"A certain lot of land and buildings in said North "Providence, and being taxed in the name of Hiram Ide, "viz., being about ten acres of land on the easterly side "of the road that leads from Olneyville to Triptown; "for a further description reference is had to a certain "mortgage deed given to William Angell, which mort- "gage is recorded in North Providence Registry of "Deeds, book 8, page 228."

The reference to the mortgage recorded was wrong.

STAPLES, *C. J.*:

"It is impossible by this description alone to "determine that the collector intended to con- "vey the premises described in the plaintiff's "declaration, or what he did convey."

It follows that the Court erred in refusing to affirm the fifth proposition of law submitted by plaintiff (Record, p. 24) and that the fourth assignment of error was well taken (Record, p. 33).

It also follows that the Court erred in receiving in evidence the Comptroller's deed based on the 1881 sale, which deed described the land conveyed in the same words as those used in the assessment-rolls of 1868–1870 (Record, pp. 17, 18), and that the eighth assignment of error was well taken (Record, p. 34).

## III.

**The act of the Comptroller at the sales of 1881, 1885, and 1890 in treating the land as already the property of the State, and in rejecting all bids, was a jurisdictional defect in the proceedings, unless the property was already the property of the State under the 1877 sale.**

An amendment of 1881 to chapter 427 of Laws of 1855 required the Comptroller to bid in for the State all lands "then belonging to the State" and to reject any and all other bids therefor (chap. 402 of 1881, sec. 5, Appendix, p. 79).

The plaintiff gave evidence tending to show that at the 1881 sale the lands in question were claimed by the Comptroller as the property of the State; that on the Sales Book (or list of lands to be sold) prepared by him in anticipation of the sale the word "State" was written against all lots supposed to be State property; that when a parcel against which such memorandum had been made was reached for sale, the officer conducting the sale would immediately bid in the parcel for the State, and the auctioneer would at once, and without giving any opportunity for bids, strike the same off to the State; that any bid made for lands marked "State" on the Sales Book were rejected, and that the land now in question was so marked (Record, p. 22).

The Court was asked to rule that

"If the Court shall find that at the sale of 1881 the "Comptroller treated the land in question as already "the property of the State and struck the same off the "State without giving any opportunity for other per- "sons to bid thereon, then the State acquired no title "by reason of such sale, and such sale was not vali-

" dated or made effectual by chapter 448 of Laws of " 1885 or chapter 711 of 1893 (Record, p. 25).

The request was refused, and on such refusal error is assigned. The Amendment of 1881 has been twice before the Courts of New York, and it has so far been held that it does not attempt to give to the peremptory bidding in which it requires the force of an independent purchase; that as regards lands not in fact and in law " belonging to the State," it has no application, and that if the Comptroller does so sell lands not the property of the State, such procedure is a jurisdictional defect and the State gets no title by such bidding in.

Turner *vs.* Boyce (1895), 11 Misc., 502, 513.

Andrus *vs.* Wheeler (1896), 18 Misc., 646, 651; reversed 22 App. Div., 596.

In *Andrus* vs. *Wheeler* the trial Court had found that both the sales of 1881 and 1885 were invalid by reason of the act of the Comptroller in treating the land then in question as already State property. The Appellate Division concurred in the holding that when the land was not in fact State property, such procedure was a jurisdictional defect, but it reversed because such fact was not proved as regards the 1885 sale, but inadvertently assumed by the trial Court.

The question seems to be primarily one of statutory construction. Did the Legislature intend, by the amendment of 1881, that the State should acquire title to land which it did not already own by this formal sale at which no one should be allowed to bid, or did it intend merely that lands already owned by the State should be withdrawn from the sale?

The construction given to the act by Kellogg, *J.*, at Special Term, in the case of *Turner* vs. *Boyce* (1895), 11 Misc,. 502, has been accepted as correct, so far the question has been before the Court of New York, and it

would seem to be a construction founded in common sense. He says (p. 512):

"I do not think that the Legislature ever supposed that any one would be misled into the belief that a deed made in accordance with its injunction in this section created a title in the State or mended any. It is only as to lands *already belonging to the State* that the Comptroller is authorized to refuse bids. To such lands the State needs no new or additional grant. If the State did not already own them, the State, to get title, must compete with other bidders. So, the intention of the Legislature is apparent. It was merely intended to withdraw such lands from the sale. Deeding to the State under such circumstances, while an authorized form made such deeds only evidence that the State paid the tax because of previous ownership.

"Obviously, to give to such deeds the character and force of independent grants would be to hold that the State is not prohibited by the Constitution from taking the property of the citizen without compensation or without due process of law. The owner of the land is deprived of his right to have his land go to the person who will take the smallest quantity and pay the tax, saving to himself the portion not required to pay the tax. As to the lands already owned by the State the provisions of this section harm no one, but as to lands not in fact owned by the State the State has no power to obtain title in this way, nor does this section presume to confer such power."

## SIXTH.

**The Court erred in receiving evidence against plaintiff's objection.**

Two exceptions are presented to the rulings of the Court upon questions of evidence and error assigned upon them. These are :

*First*—The reception of the Comptroller's deed based on the 1881 sale, against plaintiff's objection that it was void on its face for uncertainty of description (Record, pp. 17, 18).

*Second*—The reception of the Comptroller's certificate of sale from the 1890 sale, against the objection of plaintiff that it was not evidence of a conveyance of title, or, at most, evidence of an equitable title, which could not be considered in an action of ejectment (Record, p. 19).

(1) *The Comptroller's deed on the* 1881 *sale was void by reason of uncertain description.*

That description was :

> " Macomb's Purchase, Great Tract One (1) Town-
> " ship twenty-four (24), northwest quarter (¼), five
> " thousand two hundred and eighty-five acres
> " being all that remains of said northwest quarter
> " after excepting therefrom one thousand (1,000)
> " acres in the northwest corner thereof and twelve
> " hundred and fifteen (1,215) acres thereof covered
> " by water.
>
> " One thousand (1,000) acres in the northwest
> " corner of said northwest quarter."

This description is the same as that contained in the assessment-rolls for 1868, 1869 and 1870, and its sufficiency has been already considered.

The rule requiring certainty of description in tax proceedings applies *a fortiori* to the deed which con-

summates them. It must be sufficient *in itself* to identify the precise parcel intended to be conveyed.

Stout *vs.* Mastin (1891), 139 U. S., 151.
Tallman *vs.* White (1848), 2 N. Y., 66, 70.
Matter of N. Y., C. and H. R. R. R. (1877), 70 N. Y., 191.
Matter of N. Y., C. and H. R. R. R. (1882), 90 N. Y., 342.
Zink *vs.* McManus (1890), 121 N. Y., 259.
People *vs.* Mahoney (1880), 55 Cal., 286.
Curtis *vs.* Supervisors (1867), 22 Wis., 167.
Orton *vs.* Noonan (1868), 23 Wis., 102.
Bowers *vs.* Andrews (1876), 52 Miss., 596.

How is it possible, from the description contained in the deed alone, to locate the 5,285-acre parcel which it purports to convey? The exception must, of course, be first located. The parcel of 1,000 acres in the northwest corner may be located in an infinite number of ways. Is it a square, a parallelogram or a triangle? Of course, if the rule is to be adopted that a parcel of land in the corner of a larger tract means that such parcel is to be laid out in a square form, the exception may be certain enough. But such presumption violates the rule that in a tax deed words necessary to identify the land will not be supplied by intendment.

The exception of 1,215 acres water is still more uncertain. There is nothing to locate the excepted parcel as to shape or boundaries except the word "water." It does not appear on the face of the deed what part of the township is land covered by water, nor indeed with any certainty that any part of it is so covered. The exception is not of *all lands* covered by water, but of a specific number of acres. The expression "covered by water" would seem to identify the excepted parcel only in the contingency (which in this case did not happen) that the area of land so covered happened to exactly correspond with the area excepted. The

exception is not different in principle from what it would have been had it read "1,215 acres covered with forest," in which case its insufficiency would have been evident.

(2) *The certificate issued on the* 1890 *sale was incompetent.*

The New York statute is that the legal title to land sold for taxes shall be conveyed by a deed to be executed by the Comptroller under his hand and seal, and witnessed by the Deputy Comptroller, Surveyor-General or Treasurer (chap. 427 of 1855, secs. 63, 65; Appendix, p. 53).

The certificate given on the sale by the Comptroller to the purchaser is not a conveyance in any sense, but merely a memorandum of the purchase and a statement of the time when the purchaser will be entitled to a deed (chap. 427 of 1855, sec. 46; Appendix, p. 48).

It was this certificate which defendant offered as evidence (Record, p. 19).

It is, we think, settled law that the certificate of sale does not of itself convey title. It does, of course, give the purchaser an interest in the land. Prior to the expiration of the time to redeem, such interest is a lien merely. After that it may, perhaps, be treated as evidence of an equitable title.

Blackwell, Tax Titles, 5th ed., sec. 963.

In *Lessee of Rice* vs. *White* (1837), 8 Ohio, 216, an action of ejectment on a tax title, the Court says:

> "The certificate of purchase does not convey a "legal title; but it is evidence of an equitable "title to the land, and enables the purchaser to "call in the legal title."

*Dolph* vs. *Barney* (1874), 5 Oregon, 191, 213, is to the same effect.

It is also settled law that an equitable title is no

defense to an action of ejectment in this Court. In such action the strict legal title prevails.

Foster *vs.* Mora (1878), 98 U. S., 425.
Johnson *vs.* Christian (1888), 128 U. S., 374.

The Practice Act of 1872, requiring practice to conform to State rules, does not authorize equitable defenses in ejectment, though permissible by State practice.

Sedgwick and Wait, Trial of Title (2d ed.), sec. 881.
Butler *vs.* Young (1872), 1 Flipp., 276.

## SEVENTH.

**The judgment should be reversed and a new trial ordered.**

FRANK E. SMITH,
THOMAS F. CONWAY,
Counsel for Plaintiff in Error.

Plattsburgh, N. Y.

April, 1899.

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# Supreme Court of the United States.

THE SARANAC LAND AND TIMBER COMPANY,
Plaintiff in Error,

*against*

JAMES A. ROBERTS, as Comptroller,
Defendant in Error.

October Term, 1897
No. ~~331.~~ 944.

## Appendix to Brief for Plaintiff in Error.

Counsel have endeavored in this appendix to collect the Statutes of New York to which reference is made in the brief, and also those relating to taxation to which reference is made in the opinions of the principal New York authorities cited.

We have intended to submit these statutes as they were at the time the tax proceedings were had which have given rise to this controversy; that is, between 1866 and 1885. We have added some short statutes of a later date amending the act (chap. 448 of 1885) the validity of which is challenged.

We have omitted certain titles of the Revised Statutes relating to taxation of corporations and to certain counties only.

FRANK E. SMITH,
THOMAS F. CONWAY,
Counsel for Plaintiff in Error.

# Revised Statutes.

[Original paging.]

(Took effect January 1, 1838.)

## PART I., CHAPTER XIII.

[387] OF THE ASSESSMENT AND COLLECTION OF TAXES.

### Title I.

OF PROPERTY LIABLE TO TAXATION.

*What Subject to Taxation.*

SECTION 1. All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.

*Lands Defined.*

§ 2. The term "land," as used in this chapter, shall be construed to include the land itself, all buildings, and other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the state; and the terms "real estate" and "real property," whenever they occur in this Chapter, shall be construed as having the same meaning as the term "land" thus defined.

*Personal Estate Defined.*

[388] § 3. The terms "personal estate," and "personal property," whenever they occur in this Chapter, shall be construed to include all household furniture; monies; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in monied corporations. They shall also be construed to include such

portion of the capital of incorporated companies, liable to taxation on their capital as shall not be invested in real estate.

*Property Exempt from Taxation.*

§4. The following property shall be exempt from taxation:

1. All property, real or personal, exempted from taxation by the Constitution of this state, or under the Constitution of the United States:

2. All lands belonging to this state, or the United States:

3. Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school-house, court-house and jail; and the several lots whereon such buildings are situated, and the furniture belonging to each of them:

4. Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to, or connected with the same:

5. The real and personal property of every public library:

6. All stocks owned by the state, or by literary or charitable institutions:

7. The personal estate of every incorporated company not made liable to taxation on its capital, in the fourth title of this chapter:

8. The personal property of every minister of the gospel, or priest, of any denomination; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars: and,

9. All property exempted by law from execution.

*Deductions in Case of Minister, etc.*

§ 5. If the real and personal estate, or either of them, of any minister or priest, exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

*Lands Sold by the State.*

§ 6. Lands sold by the state, though not granted, or conveyed, shall be assessed in the same manner as if actually conveyed.

*Individual Owners of Stocks.*

§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual, for such stock.

## Title II.

[389] Of the Place and Manner in which Property is to be Assessed.

### ARTICLE FIRST.

Of the Place in which Property is to be Assessed.

*Lands, Where Taxed.*

Section 1. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

*Lands not Occupied by Owner.*

§ 2. Land occupied by a person other than the owner, or may be assessed to the owner or occupant, or as non-resident lands.

[As amended by L. 1851, ch. 176.]

*Non-resident Lands Defined.*

§ 3. Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided.

*Lands Divided by Boundary Lines.*

§ 4. When the line between two towns or wards divides a farm, or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides; if unoccupied, each part shall be assessed in the town in which the same shall lie; and this, whether such division line be a town line only, or be also a county line.

*Personal Estate, where Taxed.*

§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case shall property so held under either of these trusts, be assessed against any other person, and in case any person possessed of such personal estate shall reside during any year in which taxes may be levied, in two or more counties, towns or wards, his residence for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted, but the products of any state of the United States, consigned to agents in any town or ward of this state, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents of monied corporations or capitalists be liable to taxation under this section, for any monies in their possession or under their control transmitted to them for the purposes of investment or otherwise.

[As amended by L. 1851, ch. 176.]

*Property of Corporations, where Taxed.*

§ 6. The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial
[390] concerns of the company, shall be; or if such company have no principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll-bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company, are collected in several town or wards, the company shall be assessed in the town or ward, in which the treasurer or other officer authorized to pay the last preceding dividend, resides.

## ARTICLE SECOND.

OF THE MANNER IN WHICH ASSESSMENTS ARE TO BE MADE, AND THE DUTIES OF THE ASSESSORS.

*Assessment Districts.*

§ 7. The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in such town or ward.

*Inquiry as to Names of Taxable Inhabitants.*

§ 8. Between the first days of May and July, in each year, they shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants, in their respective towns or wards, and also all the taxable property, real or personal, within the same.

*Assessment-Roll, Form of.*

§ 9. They shall prepare an assessment-roll, in which they shall set down in four separate columns, and according to the best information in their power:

1. In the first column, the names of all the taxable inhabitants, in the town or ward, as the case may be.

2. In the second column, the quantity of land to be taxed to each person.

3. In the third column, the full value of such land, [391] according to the definition of the term land, as given in the first title of this chapter.

4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

*Trustee, Guardian, etc., how Assessed.*

§ 10. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him, in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character.

*Lands of Non-residents.*

§ 11. The lands of non-residents shall be designated in the same assessment-roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

*Proceedings of Assessors where Tract is Subdivided.*

§ 12. If the land to be assessed, be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows:

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded;

2. If they can obtain correct information of the subdivisions they shall put down in their assessment-rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest and proceeding in numerical order to the highest;

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation;

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity;

5. If such quantity be a full lot, it shall be designated by the number alone; if it be part of a lot, the part must be designated by boundaries, or in some other way, by which it may be known.

*Same, where Tract is not Subdivided.*

§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows:

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions, as the case may be;

[392] 2. They shall set down in the proper column, the quantity and valuation as above directed;

3. If the quantity to be assessed be the whole tract,

such a description by its name or boundaries will be sufficient; but if a part only is liable to taxation, that part or the part not liable, must be particularly described;

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed; and if they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part.

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors;

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of future assessors. And the expense of making such survey and map shall be immediately repaid to the supervisor out of the county treasury; and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

*Survey of Non-resident Lands Divided by Town Line.*

§ 14. Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

[Sections 15 and 16 repealed by L. 1851, ch. 176.]

*Rule of Valuation.*

§ 17. All real and personal estate liable to taxation, [393] shall be estimated and assessed by the assessors at its

full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor.

[As amended by L. 1851, ch. 176.]

*Qualification of Rule.*

§ 18. The preceding section shall be followed in all assessments made under this chapter, except where the assessors shall be specially required by law to observe a different rule.

*Roll, when to be completed; Notice.*

§ 19. The assessors shall complete the assessment-rolls on or before the first day of August, in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall forthwith cause notices thereof to be left with one of their number; they shall forthwith cause notices thereof to be put up at three or more public places in their town or ward; and in case the assessment-roll shall include property belonging to a railroad corporation, they shall at the same time cause a like notice to be mailed to the treasurer thereof, or delivered to the railroad agent at the nearest station.

[As amended by L. 1857, ch. 536 and L. 1858, ch. 110.]

*Contents of Notices.*

§ 20. Such notices shall set forth that the assessors have completed their assessment-roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day to meet

at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered, and it shall be their duty to adjourn from time to time, as may be necessary, to hear and determine in accordance with the rule prescribed by section fifteen of said title two, such complaints; but in the several cities of this state, the notices, required by this section, may conform to the requirements of the respective laws regulating the time, place and manner for revising the assessments in said cities, in all cases where a different time, place and manner is prescribed by said laws from that mentioned in this act.

[As amended by L. 1851, ch. 176 and L. 1857, ch. 596.]

*Inspection of Roll.*

§ 21. The assesssor with whom such assessment-roll is left, shall submit the same, during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

[Sections 22, 23, 24, 25 and 26 repealed by L. 1851, ch. 176.]

*Delivery of Rolls by Assessors.*

§ 27. The roll, thus certified, shall, on or before the [394] first day of September in every year, be delivered by the assessors of each ward, in the city of New York, to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors at their next meeting.

*Assessors to Act under Instructions from Comptroller.*

§ 28. The assessors, in the execution of their duties, shall use the forms, and pursue the instructions, which shall from time to time be transmitted to them by the comptroller.

*Neglect of Duty by Assessors.*

§ 29. If any assessor shall willfully refuse or neglect to perform any of the duties required of him, by this chapter, he shall forfeit, to the people of this state, the sum of fifty dollars.

*Names of Delinquent Assessors to be Certified.*

§ 30. If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment-roll, the name of such delinquent assessor, stating therein the cause of such omission.

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## ARTICLE THIRD.

### Of the Equalization of the Assessments, and the Correction of the Assessment Rolls.

*Supervisor to Examine Assessment Rolls.*

§ 31. The board of supervisors of each county in this state, at their annual meeting, shall examine the assessment-rolls of the several towns in their county, for the purpose of ascertaining whether the valuationss in one town or ward, bear a just relation to the valuations in all the towns and wards, in the county; and they may increase or diminish the aggregate valuations of real estates, in any town or ward, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary, to produce a just relation between all the valuations of real estates in the county; but they shall, in no instance, reduce the aggregate valuations of all the towns and wards, below the aggregate valuation thereof, as made by the assessors.

*Lands of Non-residents.*

§ 32. The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents, as may be necessary to render such descriptions conformable to the provisions of this chapter; and if such alterations can not be made, they shall expunge the descriptions of such lands, and the assessments thereon, from the assessment-rolls.

*Tax to be Set Down.*

§ 33. They shall also estimate and set down in a fifth column, to be prepared for that purpose, in the assessment-rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

*Aggregate Valuation to be Determined.*

§ 34. They shall also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards, as corrected by them; and shall cause their clerk to transmit to the comptroller, by mail, a certificate of such aggregate valuations, showing separately, the aggregate amount of real and personal estate in each town or ward, as corrected by the board.

*Corrected Assessment-Roll to be Delivered.*

§ 35. They shall cause the corrected assessment-roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who shall deliver the same to the clerk of their city or town, to be kept by him for the use of such city or town.

[396] *Copies to be Delivered to Collectors.*

§ 36. The boards of supervisors of the several counties in this state, shall cause the corrected assessment-roll of each town or ward in their respective counties, or a fair copy thereof, to be delivered to the collector of such town or ward, on or before the fifteenth day of December in each year.

*Contents of Warrant to Collectors.*

§ 37. To each assessment-roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or of a majority of them, shall be annexed, commanding such collector, to collect from the several persons named in the assessment-roll, the several sums mentioned in the last column of such roll, opposite to their respective names.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the monies so to be collected, after deducting the compensation to which he may be legally entitled, to pay,

1. To the commissioners of common schools of his town, such sum as shall have been raised for the support of common schools therein:

2. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein:

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town:

4. To the supervisor of the town, all other monies which shall have been raised therein, to defray any other town expenses: and,

5. To the treasurer of the county, the residue of the monies so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the monies to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorize the collector, in case any person named in the assessment-roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such persons; and it shall require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing.

*Supervisors to Transmit Accounts to County Treasurer.*

§ 38. As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county an account thereof, stating the sums of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom, and the time when the same are to be paid; and the county treasurers, on receiving such account, shall charge to each collector, the sums to be collected by him.

*Variation of Warrant in Cities.*

§ 39. Wherever the laws respecting cities, shall have directed the monies assessed for any local purpose, to be paid to any person or officer other than those named in the preceeding thirty-seventh section, the collector's warrant may be varied accordingly, so as to [397] conform to such alteration.

## Title III.

OF THE COLLECTION OF TAXES, THE DISPOSITION TO BE MADE OF THE MONIES COLLECTED, AND THE PROCEEDINGS IN RELATION TO UNPAID TAXES.

### ARTICLE FIRST.

OF THE MANNER IN WHICH TAXES ARE TO BE COLLECTED, AND THE DUTIES OF THE COLLECTOR.

*Collector to Call for Taxes.*

SECTION 1. Every collector, upon receiving the tax-list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call, at least, once, on the person taxed, or at the place of his usual residence, if in the town or ward for which such collector has been chosen, and shall demand payment of the taxes charged to him on his property.

*Levy of Tax by Distress and Sale.*

§ 2. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found, within the district of the collector; and no claim of property to be made thereto by any other person, shall be [398] available to prevent a sale.

*Notice of Sale of Goods Distrained.*

§ 3. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in, at least, three public places, in the town where such sale shall be made. The sale shall be by public auction.

*Surplus Monies Arising on Sale.*

§ 4. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was, when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus monies shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law.

*Proceedings in Case of Removal of Person Taxed.*

§ 5. In case any person upon whom any tax now is, or hereafter shall be assessed, in any ward of any of the cities, or in any town within this state, shall have removed out of such ward or town, after such assessment, and before such tax ought by law to have been collected; or if any person shall neglect or refuse to pay any tax which now is, or hereafter shall be assessed in any ward of either of the said cities, or in any town, upon any estate of such person, situated out of the ward or town in which he shall reside, and within the county; it shall be lawful, in either of those cases, for the collector of such ward or town, to levy and collect such tax of the goods and chattels of the person assessed, in any ward within the said county, to which such person shall have so removed, or in which he shall reside.

*Collector to Pay Over Monies.*

§ 6. Every collector shall, within one week after the time mentioned in his warrant, for paying the monies

directed to be paid to the town officers of his town and to the county treasurer, pay to such town officers and county treasurer, the sums required in such warrant to be paid to them respectively, first retaining the compensation to which he may be legally entitled. The town officers to whom any such monies shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the col-
[399] lector with the county treasurer, and shall entitle him to a credit, in the books of the county treasurer, for the amount therein stated to have been received; and no other evidence of such payment shall be received by the county treasurer.

*Surplus, how Disposed Of.*

§ 7. Whenever any greater amount of taxes shall be assessed in any town than the town charges thereof, and its proportion of the state tax, and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and the same shall go to the reduction of the tax of the succeeding year.

*Tax on Part of Lot.*

§ 8. The collector shall receive the tax on a part of any lot, piece or parcel of land, charged with taxes, provided the person paying such tax shall furnish a particular specification of such part; and if the tax on the remainder of such lot, piece or parcel of land, shall remain unpaid, the collector shall enter such specification, in his return to the county treasurer, to the end that the part on which the tax remains unpaid, may be clearly known.

*Tax on Undivided Share.*

§ 9. If the part on which the tax shall be so paid, be an undivided share, then the person paying the same,

shall state to the collector who is the owner of such share, that it may be accepted in case of a sale for the tax on the remainder. And the collector shall enter the name of such owner on his account of arrears of taxes.

*Collector to Make Return of Unpaid Taxes.*

§ 10. If any of the taxes mentioned in the tax-list annexed to his warrant shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county treasurer, or in case of his absence, before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels, belonging to, or in the possession of the persons charged with, or liable to pay such sums, wherein he could levy the same, he shall be credited by the county treasurer with the amount thereof.

*Refusal of Collector to Serve.*

§ 11. If any person chosen or appointed to the office of collector of any town or ward in this state, shall refuse to serve, or shall die, resign, or remove out of the town or ward, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of such town or ward, shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment

shall not exonerate the former collector, or his sureties, from any liability incurred by him or them.

*Warrant to Person Appointed.*

[400] § 12. If a warrant shall have been issued by the board of supervisors prior to any appointment under the last section, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to himself; but if such warrant can not be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, which shall be directed to the collector so appointed. And upon every such appointment, the supervisor of the town or ward, if he shall think it necessary may extend the time limited for the collection of the taxes, for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer.

*Proceedings in Case Collector Neglects to Pay over Monies.*

§ 13. If any collector shall refuse or neglect to pay to the several town officers of his town or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sums as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and return such warrant within forty days after the date thereof; which warrant the county treasurer shall immediately deliver to the sheriff of the county; but

no such warrant shall be issued by the county treasurer for the collection of monies payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor as above provided.

*Execution of Warrant; Disposition of Monies.*

§ 14. The sheriff to whom such warrant is directed, shall immediately cause the same to be executed, and shall make return thereof to the county treasurer, within the time therein specified, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. Such part of the monies collected, if any, as ought to have been paid by the collector to town officers, shall be paid by the county treasurer to the town officers to whom the collector was directed to pay the same; but if the whole amount of monies due from the collector, shall not be collected in such warrant, the county treasurer shall first retain the amount which ought to have been paid to him, before making any payment to the town officers.

*Sheriff's Return.*

§ 15. If the whole sum due from the collector shall be collected, the sheriff shall so state in his return; but if a part only, or if no part of such sum shall be collected, the sheriff shall state in his return the amount levied, if any, exclusive of his fees, and shall also certify that such collector has no goods or chattels, lands or tenements, in his county, from which the monies, or the residue thereof, as the case may be, could be levied; [401] and in either case, the county treasurer shall forthwith give notice to the supervisor of the town or ward, of the amount due from such collector.

*Collector's Bond, when to be Sued.*

§ 16. The supervisors shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit; and the monies recovered shall be applied and paid by the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

*Where Sheriff Neglects to Make Return.*

§ 17. If any sheriff shall neglect to return any such warrant, or to pay the money levied thereon, within the time limited for the return of such warrant; or shall make any other return than such as is above mentioned, the county treasurer shall forthwith proceed to collect, by attachment, the whole sum directed to be levied by such warrant.

*Where County Treasurer Fails to Collect.*

§ 18. In case the county treasurer shall fail to collect, such monies by attachment, he shall certify to the comptroller, that he has issued such warrant, stating its contents, that the sheriff has neglected to return the same, in the manner required by law, or to pay the money levied thereon, as the case may be, and that he has pursued the remedy, thereon, by attachment, without effect.

*Where Sheriff to be Prosecuted.*

§ 19. The comptroller shall give notice thereof to the attorney-general, who shall immediately prosecute such sheriff, and his sureties, for the sum due on such warrant; which sum, when collected, shall be paid to the treasurer of this state, and by him, on the comptroller's warrant, to the county treasurer.

*Satisfaction of Collector's Bond.*

§ 20. Upon the settlement of the amount of taxes, directed to be collected by any collector, in any of the towns or wards in this state (the city of New York excepted), the county treasurer shall, if requested, give to such collector, or to any of his sureties, a satisfaction piece in writing, and shall acknowledge the same, before some person authorized to take acknowledgments of the satisfaction of judgments in courts of record.

*Entry of Record of Satisfaction.*

§ 21. Upon the production of such satisfaction piece, acknowledged as aforesaid, the clerk of the county shall enter satisfaction of record of the collector's bond, which shall thereby be discharged.

*Fees for Acknowledgment.*

§ 22. The officers taking and entering such acknowledgment of satisfaction, shall be entitled to the same fees as for taking and entering acknowledgment of satisfaction of a judgment in the courts of common pleas.

## ARTICLE SECOND.

[402]

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURERS, AND THE DUTY OF THE COMPTROLLER, AND OTHER OFFICERS THEREUPON.

## ARTICLE THIRD.

[407]

OF SALES FOR UNPAID TAXES, AND THE CONVEYANCE AND REDEMPTION OF LAND SOLD.

[Articles two and three were repealed by chapter 298 of Laws of 1850 and a system of sales by County Treasurers substituted in place of sales by the Comptroller as directed by the Revised Statutes; the Law of

1850 was in turn repealed by chapter 427 of 1855 and the provisions of articles two and three of this chapter and title of the Revised Statutes were in substance re-enacted. See chapter 427 of 1855, *infra* page 33.]

## Title IV.

REGULATIONS CONCERNING THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES, AND THE COMMUTATION OR COLLECTION THEREOF.

(This Title is omitted as containing nothing material to the present case.)

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## Title V.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

*Town and City Clerks to Certify Names of Assessors.*

SECTION 1. The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October, in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, and the same shall be delivered to the board of supervisors at their next meeting.

[419]

*Delinquencies of Clerks and Assessors.*

§ 2. The boards of supervisors of the several counties, at every annual meeting, shall transmit to the comptroller the names and places of abode of the town clerks and assessors, in their respective counties, who shall have willfully refused or neglected to perform the duties required of them in this chapter; and the comptroller shall thereupon give notice to the district attorneys of the proper counties, to the end that they may

prosecute such delinquent town clerks and assessors, for the penalties incurred by them.

*Securities Belonging to Residents of other States.*

§ 3. When any bond, mortgage, note, contract, account or other demand, belonging to any person not being a resident of this state, shall be sent to this state for collection, or shall be deposited in this state for the same purpose, such property shall be exempt from taxation; and nothing contained in this chapter shall be construed to render any agent of such owner liable to be assessed or taxed for such property; but every such agent shall be entitled to have any such property deducted from his assessment, upon making affidavit, before the assessors at the time appointed by them for renewing their assessments, that such property belongs to a non-resident owner, and therein specifying his name and residence.

*Remedy by Tenant for Taxes Paid.*

§ 4. When the tax on any real estate shall have been collected of any occupant or tenant, and any other person, by agreement, or otherwise, ought to pay such tax, or any part thereof, such occupant, or tenant, shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due, or accruing from him to such person, for the land so taxed.

*Losses by Collector or County Treasurer.*

§ 5. All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by the default of the treasurer of any county, in the discharge of the duties imposed by this chapter, shall be chargeable on such county. And the

several boards of supervisors shall add such losses, to the next year's taxes of such town or county.

*Cancellation of Erroneous Charge for United States Direct Tax.*

§ 6. Whenever it shall appear to the comptroller, that any charge of arrears of the direct tax of the United States, returned to his office as unpaid, has been paid to any of the collectors of that tax, or that the same lands have been twice charged with the same tax, he shall cancel the erroneous charge on the books of his office.

*Comptroller May Require Corrected Returns of Non-resident Lands.*

§ 7. If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received,
[420] he may give notice of such apprehension to the board of supervisors of the proper county, at their annual meeting, specifying the several towns in such county, the returns from which will probably require correction.

*Duty of Supervisors Thereupon.*

§ 8. It shall be the duty of such board of supervisors to require the assessors and the collector of such town, specified in the notice of the comptroller, to meet in such town at such place as shall be designated by the supervisors, within thirty days of the expiration of the time, when the collectors are to make their returns to the county treasurers.

*Duty of Assessors and Collectors.*

§ 9. It shall be the duty of the assessors and collectors to meet pursuant to such requisition. The col-

lectors shall specify to the assessors, the several lots to be returned as non-resident property, by reason of the non-payment of the taxes; and the assessors shall arrange the same according to the provisions of this chapter, and shall examine the descriptions of the lots; and in case any of them are found erroneous or imperfect, they shall correct the same, conformable to such instructions as may have been received from the comptroller, and the collector shall thereupon return the lots as arranged and described by the assessors, to the county treasurer.

*Comptroller's Certificate or Deed.*

§ 10. Every certificate or conveyance executed by the comptroller in pursuance of the provisions of this chapter, may be recorded in the same manner, and with the like effect, as a deed regularly acknowledged or proved, before any officer authorized by law, to take the proof and acknowledgment of deeds.

*Sales for Taxes for Opening Roads.*

§ 11. All sales of lands charged with taxes in arrear for opening and improving roads within this state, shall be conducted in the manner hereinbefore prescribed; and the owners of the lands sold, shall be allowed to redeem within the same time, and on the same conditions.

*Comptroller to Issue Blank Forms and Instructions.*

§ 12. The comptroller shall, from time to time, at his discretion, transmit blank forms of assessment-rolls, and of returns of unpaid taxes, to the several county treasurers in this state; together with such instructions as he shall think useful, for the purpose of enforcing the uniform and proper execution of this chapter.

*Distribution of Forms and Instructions.*

§ 13. The county treasurers shall distribute such of the said forms and instructions, as shall have been intended for the use of assessors, among the town clerks, in their respective counties, who shall deliver the same to the assessors in their respective towns. The county treasurer shall also transmit or deliver a copy of such forms and instructions to each of the assessors in any city in his county.

*Copies of this Chapter to be Distributed.*

§ 14. The comptroller shall, from time to time, whenever he shall find it to be necessary, cause to be printed, at the expense of this state, a sufficient number of copies of this chapter, to furnish one copy to each
[421] county treasurer, supervisor, town clerk, assessor and collector within this state; and shall transmit to each county treasurer a sufficient number for his county. Every county treasurer receiving such copies, shall immediately transmit, at the expense of the county, to the clerk of each town therein, five copies, to be distributed by him among the officers entitled thereto; and he shall also transmit or deliver one such copy to each assessor and collector, in every city in his county.

*Punishment for Neglect of Duty.*

§ 15. If any of the officers concerned in the execution of this chapter, shall willfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

## Title VI.

SPECIAL AND LOCAL PROVISIONS.

(This Title is omitted as not relating to Franklin County.)

## LAWS OF 1851, CHAPTER 176.

AN ACT to amend the law for the assessment and collection of taxes.

SECTION 1. Section two, article one, title two, chapter thirteen, part first of the Revised Statutes in relation to the assessment and collection of taxes, is hereby amended so as to read as follows: "Land occupied by a person other than the owner, may be assessed to the owner or occupant, or as non-resident lands."

SEC. 2. Section five of the same title is hereby amended so as to read as follows: "Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator, and in no case shall property so held under either of these trusts, be assessed against any other person, and in case any person possessed of such personal estate shall reside during any year in which taxes may be levied, in two or more counties, towns or wards, his residence for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted, but the products of any state of the United States, consigned to agents in any town or ward of this state, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents of moneyed corporations or capitalists be liable to taxation under this section, for any moneys in their possession or under

their control transmitted to them for the purposes of investment or otherwise."

SEC. 3. Sections fifteen, sixteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six of the same title are hereby repealed, and section seventeen of the same title is hereby amended so as to read as follows: "All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

SEC. 4. Section twenty of the same title is hereby amended so as to read as follows: Such notices set forth that the assessors have completed their assessment-roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day to meet at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered, and it shall be their duty to adjourn from time to time, as may be necessary to hear and determine such complaints; but in the several cities of this state, the notices, required by this section, may conform to the requirements of the respective laws regulating the time, place and manner for revising the assessments in said cities, in all cases where a different time, place, and manner is prescribed by said laws from that mentioned in this act.

*Penalty for Neglect.*

§ 5. If the assessors shall willfully neglect to hold the meeting specified in the last preceding section,* each assessor so neglecting shall be liable to a penalty of twenty dollars, to be sued for and recovered before any court having jurisdiction thereof, by the supervisor of the town, for the use of the poor of the same town; and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to the board of supervisors, at their next meeting, who shall have power to review and correct such assessment.

*Reduction of Valuation.*

§ 6. Whenever any person on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in the assessment-roll, it should be the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate; and after such examination, and such other supplementary evidence, under oath, as shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just under the rule prescribed by section* of this title; but if such person shall refuse to answer any question as to the value of his real or personal estate, or the amount thereof, or present sufficient supplementary evidence, under oath, to justify a reduction, the said assessors shall not reduce the value of such real or personal estate. The examination so taken shall be written, and shall be subscribed by the person examined, and shall be filed in the office of the town clerk of the town or city in which such assessment shall be made; and

[* Section 20, part 1, ch. 13, tit. 2, R. S.]

any person who shall willfully swear false on such examination before the assessors, shall be deemed guilty of willful and corrupt perjury. It shall also be the duty of the assessors, whenever the valuation fixed to* them, after such examination, shall exceed that sworn to by the aggrieved party or person, to indorse on the written examination, the words, "disagreed to by the undersigned assessors, under the rule prescribed for making assessments, by section fifteen, article two, title two, chapter thirteen, part one of the revised statutes, and in view of the obligations imposed by the deposition and oath, subscribed and made on the completion of the assessment-roll, to which this disagreement refers." It shall be the duty of the assessors on the same occasion, to furnish the aggrieved party or person a duplicate copy of the before mentioned written examination, together with the indorsement of disagreement aforesaid, duly signed.

*Assessors May Administer Oaths.*

§ 7. The assessors of the several towns and wards of this state, shall have power to administer oaths to any person applying to them under the provisions of the sixth section of this act.

*Assessment-Roll, Form of Oath To.*

§ 8. When the assessors or a majority of them, shall have completed their roll, they shall severally appear before one of the justices of the town or city in which they shall reside, and shall severally make and subscribe before such justice, an oath, in the following form: We, the undersigned, do severally depose and swear that we have set down, in the foregoing assessment-roll, all the real estate situated in the (town or ward as the case may be), according to our best information; and that, with the exception of those cases in

[So in original. As amended by L. 1857, ch. 536.]

which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor; and also that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief. Which oath shall be written on said roll, signed by the assessors, and certified by the justice, and shall be in place of the official certificate now required by law; and every assessor who shall willfully swear false in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties, of willful and corrupt perjury.

## LAWS 1855, CHAP. 427.

AN ACT in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes.

### Title I.

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURER, AND THE DUTY OF THE COMPTROLLER AND OTHER OFFICERS THEREUPON.

*Treasurer to Pay County Debts.*

§ 1. The treasurer of each county shall pay to the creditors of his county, from the moneys paid to him by the collectors, such sums, and in such manner as the board of supervisors shall have directed.

*State Tax, When to be Paid.*

§ 2. The several county treasurers shall, on or before the first day of March in each year, pay to the treasurer of this state, the amount of the state tax, if any, raised and paid over to them respectively, retaining the compensation to which they may be entitled.

*How Paid.*

§ 3. Such payment may also be made by depositing such money, to the credit of the treasurer of this state, in such banks in the cities of New York or Albany as shall have been designated by the comptroller, and shall then be entitled to receive the state deposits, and in case of such payment to either of those banks, the county treasurer making it, shall forthwith transmit a certificate of deposit to the comptroller, who shall thereupon certify such payment to the state treasurer, and charge him with the amount thereof.

*Certificate of Unpaid Taxes.*

§ 4. Whenever any county treasurer shall receive from a collector an amount of unpaid taxes assessed on lands of non-residents, such county treasurer shall compare the same with the original assessment-roll, which original rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof, he shall add to it a certificate showing that he has examined and compared the account with the assessment-roll, and found the same to be correct; and after crediting the collector with the amount, shall, before the first day of April next ensuing, transmit the account and collector's affidavit, to the comptroller, with a certificate that he has compared the account with the entries of the same taxes, in the original assessment-roll, and has found the same to be a true transcript of such roll.

*Tax on Land Vacant by Removal of Occupant.*

§ 5. If the taxes on any farm or lot of land, assessed to a resident, shall be returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant, before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, the supervisor of the town in which such land was assessed, shall add a description thereof to the assessmant-roll of the next year in the part thereof appropriated to taxes on lands of non-residents, and shall charge the same with the uncollected tax of the preceding year; and the same proceedings shall be had thereon, in all respects, as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added.

*Non-resident Lands.*

§ 6. Whenever the taxes upon the lands of a resident shall be returned for non-payment, as provided in the last preceding section, to the county treasurer, the collector shall annex to such return an affidavit, stating the reasons why such tax was not collected. Nothing in said last preceding section shall be so construed as to conflict with sections one, two and three of chapter four hundred and sixty-one, laws of eighteen hundred and thirty-six, but they shall be concurrent remedies.

*Tax may be Paid to County Treasurer.*

§ 7. Any person whose lands are assessed, may pay the tax assessed thereon to the treasurer of the county in which such lands were assessed, provided such payment be made to the county treasurer before he shall have made his annual return of the arrears of taxes to the comptroller. The county treasurer shall give a receipt for such payment, and shall also make return thereof to the comptroller.

*Apportionment of State Tax.*

§ 8. The comptroller shall, from the annual returns made to him of the valuations of real and personal estates in the several counties in this state, charge the several county treasurers with the amount of the state taxes, if any, to be raised in their respective counties, crediting them with their own fees; but no fees shall be allowed by the comptroller to the county treasurers, in adjusting the accounts of the county treasurers, for such portion of the state tax as is paid by credit given for taxes on non-resident property returned to him.

*Lands Imperfectly Described.*

§ 9. Whenever any account of arrears of taxes on the lands of non-residents shall be transmitted by a county treasurer to the comptroller, he shall examine them, and reject all taxes that shall be found to be charged on lands imperfectly described, and credit such county treasurer, in a book to be kept by the comptroller for that purpose, with the amount of all arrears of taxes which shall be admitted by him.

[Amended by L. 1878, ch. 152; page 68 *infra*.]

*Arrears, how Adjusted with County.*

§ 10. If the arrears so credited to the treasurer of any county shall exceed the state tax, if any, in said county, the comptroller shall cause the surplus, after deducting therefrom any balance which may be due from such county on account of taxes previously rejected by the comptroller, to be paid out of the treasury of this state, to the treasurer of the county; and the whole amount of taxes so to be assumed by the state, shall be collected for its benefit, in the manner hereinafter provided. If there be no state tax, the whole amount of such arrears, after deducting such balance as above mentioned, shall be paid to the county treasurer.

*Accounts with County Treasurer.*

§ 11. The comptroller shall state the accounts of the several county treasurers, on the first day of May in every year; and whenever any part of a state tax shall appear to be unpaid by any county treasurer, the comptroller shall transmit by mail to such county treasurer a copy of his account, requiring him to pay the balance within thirty days.

*Proceedings on Failure of County Treasurer to Settle.*

§ 12. If any county treasurer shall refuse or neglect to pay such balance within such time, the comptroller shall forthwith, (unless he shall be satisfied by due proof that such treasurer has not received such balance, and has taken all proper steps to collect the same,) deliver a copy of such county treasurer's account to the attorney-general, who shall prosecute forthwith; and the state shall be entitled to recover the balance due, with interest thereon, from the first day of May, in the year when the same ought to have been paid.

*Treasurer's Bond to be Sued.*

§ 13. The comptroller may also, in his direction, direct the board of supervisors of the proper county, to institute one or more suits on the bond of such treasurer and his sureties.

*When Suits to be Discontinued.*

§ 14. If the defendants in any suits to be brought under either of the last two preceding sections, shall at any time before judgment is obtained therein, pay the balance due the state, with interest, into the treasury, or account for the same to the comptroller, it shall be his duty, on payment of costs of suit, to direct such suits to be discontinued.

*Statement of Arrears.*

§ 15. It shall be the duty of the comptroller, on or before the first Tuesday in October, in every year, to furnish the boards of supervisors of the several counties, from which returns of arrears of taxes shall have been received at his office, with statements of the sums paid out of the state treasury, to their respective county treasurers, on account of such arrears during the year preceding.

*Rejected Taxes, Statement of.*

§ 16. The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise, to each county treasurer, a transcript of the taxes of the preceding year, assessed in any town of such county, which shall have been rejected by him, for any cause whatever, stating therein the cause of such rejection.

[Amended by L. 1878, ch. 152; page 69 *infra*.]

*Taxes on Lands Imperfectly Described.*

§ 17. Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office have been assessed on lands so imperfectly described, that the same can not, in his opinion, be located with certainty, he shall charge such taxes to the treasurer of the county in which such lands shall be, with the interest thereon, from the first day of March, in the year following that in which the taxes were laid, to the first day of February next after the discovery of such imperfect description.

[Amended by L. 1878, chap. 152; page 69 *infra*.]

*Transcript to be Delivered to Supervisors.*

§ 18. The comptroller shall also transmit, by mail, a transcript of the returns of such taxes, with the addi-

tion of such interest, to the proper county treasurer, who shall deliver the same to the supervisor of the town upon which such taxes are to be assessed, by whom it shall be delivered to the board of supervisors, at their next meeting. If the town upon which such taxes were originally assessed, shall have been divided since such assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

[Amended by L. 1878, ch. 152; page 69 *infra*.]

*Description of Lands to be Made.*

§ 19. Whenever the comptroller shall have rejected any tax, in the first instance, or have charged the same to a county, to which it shall have been credited, on account of any inaccurate or imperfect description of the lands on which such tax was laid, the supervisor of the town in which such lands are situate shall, if in his power, add to the next assessment-roll of such town an accurate description of such lands; and if necessary, may cause the survey of such lands at the expense of the town; and the board of supervisors shall charge them with the taxes and interest in arrears, stating the tax of each year separately, and shall direct the collection thereof; and such taxes and interest shall, for all the purposes of this act, be considered as the taxes of the year in which the description shall be perfected.

[Amended by L. 1878, ch. 152; page 70 *infra*.]

*If not Made, Tax Assessed on Town.*

§ 20. If an accurate description of such lands shall not have been added by such supervisor to the assessment-roll of his town the board of supervisors shall cause such arrears of taxes, and the interest thereon, to be levied on the valuations of the estate, real and

personal, of such town, as appearing by such assessment-roll, and shall direct the same to be collected with the other taxes of the same year.

[Amended by L. 1878, ch. 152; page 71 *infra*.]

*How Assessed in Case of Division of Town.*

§ 21. If the town in which such taxes were originally assessed, shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns included in the limits of such original towns, in such equitable manner as they may deem proper.

[Amended by L. 1878, ch. 152; page 71 *infra*.]

*Tax, when Canceled.*

§ 22. Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was, previously to such return, paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall have been also paid into the state treasury, he shall cause it to be repaid out of the treasury, to the person by whom such payment shall have been made.

[Amended by L. 1885, ch. 453; page 84 *infra*.]

*Account to be Transmitted to Supervisors.*

§ 23. Whenever any tax shall be so canceled by the comptroller, he shall transmit an account thereof to the treasurer of the proper county, who shall cause the same to be laid before the board of supervisors thereof, and the amount of such tax with the interest shall be collected by them of the collector or county treasurer, who made such erroneous returns, and be paid into the treasury of this state.

*Overpaid Taxes.*

§ 24. Whenever it shall appear satisfactorily to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the treasury of this state, on account of such tax; and in cases where it shall appear that the amount due for any tax has been overpaid, he may draw his warrant on the treasurer for the amount so overpaid, in favor of the person who may have made such payment.

*Losses by Default.*

§ 25. All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by the default of the treasurer of any county in the discharge of the duties imposed by this act, shall be chargeable to such county. And the several boards of supervisors shall add such losses to the next year's taxes of such town or county.

*Interest on Unpaid Taxes.*

§ 26. If any tax charged on lands of non-residents, or lands returned as under section five of this act, shall remain unpaid until the first day of August following the year in which they shall have been assessed, they shall thereafter be subject to a yearly interest, at the rate of ten per cent., until the same shall be duly paid or the lands sold, as hereinafter provided.

*Certificate of Taxes Due.*

§ 27. The comptroller shall, from time to time, give to any person requiring the same, a certificate of the amount of any tax, interest and charges, due on any tract, piece or parcel of land; and the state treasurer may receive such tax, interest and charges, and give a

receipt therefor upon such certificate, which shall be countersigned by the comptroller, and entered in the books of his office.

[Amended by L. 1878, ch. 152 ; page 71 *infra*.]

*Persons may Pay Tax for their Interest in Lands.*

§ 28. Whenever a sum in gross is assessed upon any tract, piece or lot of land, any person claiming a divided or undivided part thereof, may pay to the treasurer of the state any part of the tax, interest, and charges due thereon, proportionate to the number of acres claimed by him, on the certificate of the comptroller; and the remaining tax, interest and charges shall be a lien on the residue of the land only.

*Map of Subdivisions.*

§ 29. If the tract be subdivided, the person wishing to pay the tax upon a divided part of it, shall deliver to the comptroller a map of the subdivisions, if required by him.

*Taxes, how Paid; Overcharges.*

§ 30. Any person may pay the tax for any one year, and the interest and charges thereon, or any tract or lot of land, without paying the tax of any other year; and in case any tract or lot of land shall have been returned as containing a greater quantity of land than it shall actually contain, the amount overcharged shall be deducted, or if the tax shall have been paid according to such return, shall be refunded out of the treasury, on satisfactory proof being produced to the comptroller of the quantity actually contained in such tract or lot, at any time before the sale of such lands; but no such overcharge shall be cancelled, nor shall such over-payments be refunded unless application shall be made to the comptroller therefor within six years after the assessment of such overcharge.

*Overcharges to be Recharged to County.*

§ 31. If the whole amount of the tax, in case of the such overcharge, shall have been paid to the county treasurer, out of the treasury of this state, the comptroller shall charge the amount so refunded, with interest and charges thereon, to the treasurer of the county from which the tax was returned, and shall transmit an account thereof to him.

*Town to be Liable Therefor.*

§ 32. Such county treasurer shall deliver such account to the board of supervisors, at their then next meeting, who shall cause the amount thereof to be added to the proportion of the charges of the county to be raised in the town in which the tax was laid.

## Title II.

### Of Sales for Unpaid Taxes, and the Conveyance and Redemption of Land Sold, etc.

*When Land to be Sold.*

§ 33. Whenever any tax charged on lands returned to the comptroller, and the interest thereon, shall remain unpaid for two years from the first day of May following the year in which the same was assessed, the comptroller shall proceed to advertise and sell such land in the manner hereinafter provided.

[Amended by L. 1878, ch. 152; page 71 *infra*.]

*List of Lands and Notice of Sale.*

§ 34. He shall make out a list or statement of the lands charged with such tax and interest, and so liable to be sold; and shall cause so many copies thereof to be printed, as shall be sufficient to furnish each county treasurer with at least five copies, and each town clerk with at least two copies, and shall transmit to each

county treasurer such number of said copies as shall be equal to five copies for such county treasurer, and two copies for each town clerk in his county. And the comptroller shall also make and transmit to the county treasurer of each county, a list or statement of all the lands in such county charged with such tax and interest, who, in addition to publication in the state paper, shall cause the same to be correctly published and printed in each of the papers in his county designated by the board of supervisors for publishing the session laws, for the space of ten weeks prior to the commencement of such sale. If no newspaper shall have been designated to print the laws in any county, such list or statement shall be published in two newspapers of such county to be selected by the county treasurer; and if there shall not be two newspapers published in such county, then in two papers which the county treasurer shall ascertain to be most generally circulated in such county. But no error in the printed description in such newspapers shall vitiate or in any manner affect the validity of such sale; and all expenses of printing such list or statement shall be audited by the comptroller and paid out of the treasury of this state, on receiving one copy of the newspaper containing the same, with an affidavit of the publication of such list or statement according to the provisions of this section, to be made by the printer, publisher, or some person to whom the fact of such publication shall be known.

[Amended by L. 1878, ch. 152; page 72, *infra*.]

*List, how Transmitted.*

§ 35. The comptroller may employ agents or messengers to transmit to such of the county treasurers as he may think proper, the copies of such lists of lands liable to be sold for taxes; and the agents or messengers so employed shall require of each county

treasurer to whom they shall deliver such copies, an acknowledgment, in writing, of the receipt thereof; which acknowledgments shall be delivered by such agents or messengers to the comptroller, at least eighteen weeks before the commencement of the sale of the lands mentioned in such lists.

*Compensation of Agents.*

§ 36. The reasonable compensation of such agents or messengers shall be fixed by the comptroller, and paid out of the treasury; but the same shall not, in any case, exceed the amount of postage which would have been charged on the copies transmitted by such agents or messengers, if they had been transmitted by mail.

*Expenses, how Charged.*

§ 37. The expenses incurred by the state in printing and transmitting any list of lands liable to be sold for taxes, and in publishing notices of sale, shall be charged on the lands mentioned in said list, and shall be apportioned among the several tracts or parcels of such land, in such proportions as the comptroller shall deem just.

[Amended by L. 1878, ch. 152; page 73, *infra*.]

*Copies in County Treasurer's Office.*

§ 38. The county treasurers shall retain in their offices five of the copies transmitted to them, and shall permit all persons, at all reasonable hours, to examine the same; and shall cause the remaining copies to be delivered to the town clerks.

[Amended by L. 1878, ch. 152; page 73, *infra*.]

*County Treasurer's Expenses.*

§ 39. The expenses which may be incurred by the county treasurer, in the transmission of such lists, shall be audited and paid as contingent expenses of the county.

*Notice by Town Clerks.*

§ 40. Every town clerk to whom such copies shall be delivered, shall give notice at the opening of every town meeting for the election of town officers, that lists of all lands advertised for sale for taxes by the comptroller, are deposited in his office, and that they may be there seen and examined, at all reasonable hours, free of expense.

*General Notice to be Published.*

§ 41. After transmitting such lists to the county treasurers, the comptroller shall cause to be published, once in each week, for twelve weeks successively, in all the newspapers in this state, designated by the board of supervisors of the several counties for printing the laws, under the provisions of the act, entitled "An Act for the publication of the session laws in two newspapers in each county in this state," passed May fourteenth, one thousand eight hundred and forty-five, a general notice, stating that a list of all the lands liable to be sold for taxes has been forwarded to each of the county treasurers and town clerks in this state, and that so much of the said lands as may be necessary to discharge the taxes, interest, and charges which may be due thereon at the time of sale, will, on the day to be mentioned in such notice, and the succeeding days, be sold at public auction at the capitol in the City of Albany.

[Amended by L. 1878, ch. 152; page 73, *infra*.]

*Affidavit of Publication.*

§ 42. Every printer to whom such notice shall be transmitted for publication, shall, within twenty days after the last publication thereof, transmit to the comptroller an affidavit of due publication, made by some person to whom the fact of publication shall be known.

*Maps of Lands Sold.*

§ 43. Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary, in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county, for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made, shall furnish such maps, at the expense of the county, if they can be procured, and if not, they shall then furnish such descriptions of the lands as they can obtain, with a statement of the quantity of each subdivision, if the same be divided.

[Amended by L. 1881, ch. 402; page 74, *infra.*]

*Sale by Comptroller.*

§ 44. On the day mentioned in the notices, the comptroller shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel so assessed, shall be sold, as will be sufficient to pay the taxes, interest and charges thereon.

[Amended by L. 1881, ch. 402; page 76, *infra.*]

*Payment by Purchaser; Default.*

§ 45. The purchasers at such sale shall pay the amount of their respective bids to the state treasurer, within forty-eight hours after the last day of the sale; and if any such purchaser shall refuse or neglect to

pay the same within that time, the comptroller may state an account against him, and deliver it to the attorney-general, who shall be entitled to recover the same from the purchaser, by an action in the name of the people of this state; and for that purpose he shall forthwith cause a suit to be instituted therefor; or the comptroller may, in his discretion, re-sell the said lands upon which such bids so remaining unpaid were made, as hereinafter provided.

*Certificate of Purchase.*

§ 46. After such payment shall have been made, the comptroller shall give to the purchaser of any such lands a certificate in writing, describing the lands purchased, the sum paid, and the time when the purchaser will be entitled to a deed.

*Cancellation of Sale for Non-payment.*

§ 47. At any time after the expiration of three months from the conclusion of any sale of lands for taxes, pursuant to this act, when any purchaser at such sale shall not have paid the amount of his bid, or the same shall not have been collected from him, it shall be lawful for the comptroller to cancel such sale, by which all the rights of the said purchaser under such bid shall be extinguished.

*New Certificate May be Issued.*

§ 48. When the comptroller shall have cancelled any sale in the manner above provided, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable by the original purchaser, in case the said sale had not been cancelled, or if such certificate cannot be sold, he may transfer the same to the people of the state.

[Amended by L. 1878, ch. 152 and L. 1881, ch. 402; pages 74 and 76 *infra*.]

*Rights of New Purchaser.*

§ 49. The change of purchaser shall be noted in the sales book, and the time when made; and the certificate issued to such new purchaser, shall confer the same right to him and his legal representatives, as he would have acquired had he been the successful bidder at the sale.

*Time for Redemption.*

§ 50. The owner or occupant of any land sold for taxes, or any other person, may redeem the same, as hereinafter provided, at any time within two years after the last day of such sale, by paying to the state treasurer, on the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate of ten per cent. per annum, from the date of such certificate.

[Amended by L. 1881, ch. 402; page 77, *infra*.]

*Redemption of Undivided Parts.*

§ 51. Any person claiming an undivided part of any tract, lot or piece of land sold for taxes, may redeem the same on paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

*Undivided Share of Undivided Parts.*

§ 52. Any person claiming an undivided share in any tract or lot of land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

*Redemption of Specific Parts.*

§ 53. Any person claiming a specific part of any tract, lot or piece of land sold for taxes, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold.

*Specific Parts of Undivided Tract.*

§ 54. Any person claiming a specific part of any tract or lot of land out of which an undivided part shall have been sold for taxes, charged on the whole tract or lot, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity taxed.

*Proportional Parts; Effect of Payment For.*

§ 55. Any person claiming a specific part of any tract or lot of land out which a specific part belonging to some other person, shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying as aforesaid, at any time before the expiration of the time allowed for the redemption, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity taxed; and such payment shall operate as redemption of a proportionate part, according to the amount paid, of the land sold.

*Partial Redemptions.*

§ 56. In every case of a partial redemption, pursuant to either of the last five sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption; and the comptroller shall convey accordingly.

*Taxes on Lands Conjointly Sold.*

§ 57. Whenever the lands of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion under section fifty-two of this act, the person whose lands shall be sold may redeem the same on paying, as aforesaid, the purchase money and interest; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption moneys so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportion, until after the expiration of the time allowed for redemption.

*Suits for Proportion of Value.*

§ 58. If such owner shall not redeem the land sold, and the same shall be conveyed by the comptroller, such owner may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest and charges for which the land shall have been sold. In all actions under this or the last preceding section, the certificate of the state treasurer, countersigned by the comptroller, duly stating the facts in relation to such redemption or sale and conveyance, shall be presumptive evidence of such payment, and of all facts therein stated.

*Lien of Judgment.*

§ 59. Every judgment obtained under either of the last two sections, shall have priority, as against the lands of the defendant therein, on which the tax was assessed, and for which such proportional part ought to have been paid, to all mortgages executed, and all judgments recovered, since the twenty-third day of April, eighteen hundred and twenty-three.

*Docket, how Made.*

§ 60. But such judgment shall not be entitled to such priority, unless at the time of docketing the same the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority, as a lien on certain lands, over mortgages and other judgments pursuant to the laws regulating the collection of taxes, which entry shall be a part of such docket.

*Notice of Unredeemed Lands.*

§ 61. The comptroller shall, at least six months before the expiration of the two years allowed for redemption prepare a notice for each county, in which there shall then appear to be any lands sold for taxes and unredeemed, specifying particularly every parcel remaining unredeemed, and the amount necessary to redeem the same, calculated to the last day on which such redemption can be made, and stating that unless such lands are redeemed by a certain day, they will be conveyed to the purchaser; and he shall cause such notice to be published once in each week, for at least six weeks successively, in the newspapers designated by the boards of supervisors of such counties respectively to publish the session laws; such publication to be in the body of the newspaper, and not in a supplement; and the said six weeks' publication to be completed at least eighteen weeks before the expiration of the two years allowed for the redemption. The boards of supervisors of the respective counties shall audit and pay the expenses of such publication.

*Where no Newspapers Designated.*

§ 62. If no newspapers shall have been designated to print the laws in any county in which such lands are situated, such notices, and lists or statements, shall be

transmitted and published, as above provided, in two newspapers of such county, to be selected by the comptroller; and if there shall not be two newspapers published in such county, then in the two newspapers which the comptroller shall believe to be most generally circulated in such county.

*Deeds to be Executed of Lands Unredeemed.*

§ 63. If no person shall redem such lands within such two years, the comptroller shall, at the expiration thereof, execute to the purchaser, his heirs or assigns, in the name of the people of this state, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple; subject, however, to all the claims which the people of this state may have thereon for taxes, or other liens or incumbrances.

*Lost Certificate.*

§ 64. Whenever any certificate, given by the comptroller for lands sold for taxes, shall be lost, or wrongfully withheld by any person from the owner thereof, the comptroller may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may execute and deliver a deed to such person, as may appear to him to be the rightful owner of the land described in the certificate.

*Conveyances, how Executed; Effect Of.*

§ 65. Such conveyance, shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the deputy comptroller, surveyor general or treasurer, and all conveyances hereafter executed by the comptroller, of lands sold by him for taxes shall be presumptive evidence that the sale, and all proceedings prior thereto, from and including the assessment of the land, and all notices required by

law to be given previous to the expiration of the two years allowed to redeem, were regular, according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto.

[Amended by L. 1860, ch. 209 and L. 1885, ch. 448; pages 63 and 81, *infra.*]

*Bids for the State.*

§ 66. It shall be the duty of the comptroller to bid in for the state, at any sale of land for taxes, every lot of land by him put up for which no person shall offer to bid; and certificates of such sale shall be made by the comptroller, which shall describe the lands purchased, and specify the time when the people of this state will be entitled to a deed. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands sold shall not be redeemed, the comptroller, shall execute a release therefor, to the people of this state, or their assignees, which shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals.

[Amended by L. 1881, ch. 402; page 79, *infra.*]

*Sale of Lands Bid in by the Comptroller.*

§ 67. At any time before the expiration of the two years allowed to redeem, the comptroller may sell and assign all the interest of the people of this state, in any or all such certificates as mentioned in the last preceding section, either at public or private sale, as to him may seem most for the interest of the people, to any person who shall forthwith pay into the state treasury the amount of the purchase money charged him by the comptroller; and the assignee of such certificate, if the lands therein described shall not be redeemed, shall be entitled to a deed therefor, which shall have the same effect, and become absolute in the

same time, and on the performance of the like conditions, as in the case of conveyances under the last preceding section.

*Notice to Occupants.*

§ 68. Whenever any lot or separate tract of land sold for taxes by the comptroller, and conveyed as hereinbefore provided, shall, at the time of the expiration of the two years given for the redemption thereof, or any part thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall serve a written notice on the person occupying such land, within two years from the expiration of said time to redeem; stating in substance the sale and conveyance, the person to whom made, and the amount of the consideration money mentioned in the conveyance, with the addition of thirty-seven and a half per cent. on such amount, and further addition of the sum paid for the deed; and stating also, that unless such consideration money and the said thirty-seven and a half per cent., together with the sum paid for the deed, shall be paid into the treasury for the benefit of such grantee, within six months after the time of filing in the comptroller's office of the evidence of the service of the said notice, that the said conveyance will become absolute, and the occupant and all others interested in the land, be forever barred from all right or title thereto. And no conveyance made in pursuance of this section shall be recorded, until the expiration of such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

*Notice, how Served.*

§ 69. Such notice may be served personally, or by leaving the same at the dwelling-house of the occupant, with any person of suitable age and discretion, belonging to his family.

*Redemption by Occupant.*

§ 70. The occupant, or any other person, may, at any time within the six months mentioned in such notice, redeem the said land, by paying into the treasury, such consideration money, with the addition of thirty-seven and a half per cent. thereon, and the amount that shall have been paid for the deed; and every such redemption shall be as effectual as if made before the expiration of the two years allowed to redeem the land sold.

*Certificate of Redemption.*

§ 71. Upon such redemption, as provided for in the last preceding section, the comptroller shall give to the person redeeming a certificate under his hand and seal, stating the payment, the year in which the sale was made, and showing particularly what land such payment is intended to redeem; and such certificate shall be evidence of such redemption, and may be recorded by the clerk of the county, in the book for the recording of deeds.

*Affidavit of Service of Notice.*

§ 72. In every case of actual occupancy, the grantee, or the person claiming under him, in order to complete his title to the land conveyed, shall within one month after the service of such notice, file with the comptroller a copy of the notice served, together with the affidavit of some person who shall be certified as credible, by the officer before whom such affidavit shall be taken, that such notice as is above required, was duly served, specifying the mode of service.

*Comptroller's Certificate of Facts.*

§ 73. If the comptroller shall be satisfied by such copy and affidavit that the proper notice has been duly served, and if the moneys required to be paid for the

redemption of such land shall not have been paid, as hereinbefore provided, he shall, under his hand and seal, certify such facts, and the conveyance before made shall thereupon become absolute ; and the occupant, and all others interested in said lands shall be forever barred of all right and title thereto.

*Occupant May Redeem.*

§ 74. The occupant of any such lot, or any other person may at any time before the service of said notice by the purchaser, or the person claiming under him, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and a half per cent. thereon together with the sum paid for the deed, if any.

[Amended by L. 1885, ch. 453 and by L. 1890, ch. 556 ; pages 85 and 87, *infra.*]

*Treasurer's Receipt, Comptroller's Certificate to be Evidence.*

§ 75. Upon redemption being made, as permitted in the last preceding section, the receipt of the treasurer to whom the payment is made, accompanied by the comptroller's certificate, as required by section sixty-eight of this act, and further stating, that such redemption was made without notice, shall be presumptive evidence that such land has been correctly redeemed.

*Effect of Sale on Mortgage Lien.*

§ 76. No sale of real estate hereafter made for the non-payment of any tax or assessment, shall destroy, or in any manner affect the lien of any mortgage thereon, duly recorded or registered at the time of such sale, except as hereinafter provided.

*Notice to Mortgagee.*

§ 77. It shall be the duty of the purchaser at such sale, to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with interest, at the rate rate allowed by law thereon, within six months after the giving of such notice.

[Amended by L. 1870, ch. 280; page 65, *infra*.]

*Mortgagee's Lien.*

§ 78. If such payment shall be made, the sale of shall be of no further effect, and the mortgagee shall have a lien on the premises for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per cent. per annum, in like manner as if the same had been included in his mortgage.

*Failure to Pay.*

§ 79. In case the mortgagee shall fail to make such payment within the time so limited, he shall not be entitled to the benefit of section seventy-six of this act.

*Mortgagee and Purchaser Defined.*

§ 80. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser," shall be construed to include assignees, and real or personal representatives, as the case may be.

*Notices, how Served.*

§ 81. The notice required by section seventy-seven of this act may be given either personally or in the manner required by law, in respect to notices of non-acceptance or non-payment of notes or bills of ex-

change, and a notarial certificate thereof shall be presumptive evidence of the fact; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as is by law prescribed in respect to deeds or other evidences of title of real estate.

[Amended by L. 1870, ch. 280; page 67, *infra*]

*Notices, to Whom Directed.*

§ 82. The notice required to be given under the last preceding five sections, in cases of sales by the comptroller, shall be directed only to such persons as shall within two years from the time of such sale file in the office of the comptroller, a notice stating the name of the mortgagor and mortgagee, the date of the mortgage, and the amount claimed to be due thereon, and the county, town and tract in which the mortgaged premises are situated, with the number of the lot on which said mortgage is claimed to be a lien, with the name of the person or persons claiming notice, their residence, and the post-office to which such notice shall be addressed; in case such mortgagee or other person shall omit or neglect to file such notice with the comptroller within the said two years, then said mortgagee or other person shall be barred from all claim to redemption by virtue of said mortgage, and the title of the purchaser shall become valid and effectual the same as if such mortgage had not existed.

*Invalid Sales.*

§ 83. Whenever the comptroller shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever invalid or ineffectual to give title to the lands sold, the lands so improperly sold shall not be conveyed, but the comptroller shall cancel the sale, and forthwith cause the purchase

money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns.

*Error, how Charged.*

§ 84. If the error originated with the county or town officers, the sum so paid shall be a charge against the county from which the tax was returned; and the board of supervisors shall cause the same to be assessed, levied, collected, and paid to the treasurer of this state.

*Cancelling Sale and Refunding Money.*

§ 85. If the discovery that the sale was invalid shall not be made until after the conveyance shall have been executed for the lands sold, it shall be the duty of the comptroller, on receiving evidence thereof, to cancel the sale, to refund out of the state treasury to the purchaser, his representatives or assigns, the purchase money, and interest thereon, and to recharge the county from which the tax was returned, with the amount of purchase money, and interest at the rate of seven per cent. from the time of the sale, and such county shall cause the same to be levied and paid, as provided in the last preceding section.

*Expenses of Sale to be Apportioned.*

§ 86. The expenses attending the sales for taxes out of this act, including a due proportion of the expenses of publishing lists and notices and transmitting copies thereof, and not hereinbefore provided for, shall be a charge on the lands out of which the sales are made; and an equal part of such expense shall be added to the taxes, interest, and other charges, on each parcel of land out of which a sale may be made.

[Amended by L. 1878, ch. 152; page 74, *infra*.]

*Moneys to be paid into Treasury.*

§ 87. The moneys received upon every such sale for taxes and interest, and also for the expenses of sale, shall be paid into the state treasury, and the accounts of persons entitled to any portion of the moneys so received, for such expenses, shall be audited by the comptroller, and paid out of the state treasury.

*Neglect of Duty.*

§ 88. If any of the officers concerned in the execution of this act, shall willfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court.

*Pay of County Treasurers.*

§ 89. The county treasurers of the several counties of this state, shall not, after the thirty-first day of May next, receive any moneys in payment of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, but they shall forthwith transmit to the state treasurer all money received by them in payment of such taxes, and the interest thereon up to that time, and shall at the same time furnish the comptroller with a full account of the same, exhibiting the lots, tracts, pieces, or parcels of land, particularly describing each as described in the books of his office, upon which such taxes were paid; the amount paid upon each, and the year for which such tax was paid; and if any part of such money shall have been paid on parts of lots or tracts, upon certificates made by the comptroller, the description of such part shall be the same as contained in such certificate.

*Payments, how Credited.*

§ 90. The comptroller shall, upon the receipt of such account, cause all payments therein to be duly credited to the several tracts, pieces or lots of lands so paid, on the books in his office, as specified by section thirty-nine of chapter two hundred and ninety-eight of the laws of one thousand eight hundred and fifty; and the comptroller shall, on and after the first day of June next, be invested with all the powers and duties relating to the collection of said taxes of one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, and the sale of lands for non-payment of the same, as are conferred by this act in relation to unpaid taxes hereafter to be returned to, and admitted to the comptroller.

*Exceptions.*

§ 91. The provisions of this act (except sections two, three, eight, twelve, thirteen and fourteen), shall not in any manner affect or apply to the city and county of New York, the city of Albany, the city of Brooklyn, in the county of Kings, or the village of Williamsburgh, in said county of Kings; and in said sections the words "county treasurer" shall be construed to include the chamberlain of the city and county of New York.

*Acts Repealed; Saving Clause.*

§ 92. The act entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands in the counties where they are assessed," passed April ten, one thousand eight hundred and fifty, and the act entitled "An Act in relation to the publication of notices previous to the conveyance of lands sold for taxes," passed April six, one thousand eight hundred and

fifty, and all laws inconsistent with this act, are repealed; but the repeal or anything contained, (except section thirty, in relation to the cancellation of overcharged taxes, and sections eighty-nine and ninety, in relation to the taxes of the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, shall not in any manner affect any tax levied or assessed in either of the years one thousand eight hundred and forty-nine, one thousand eight hundred and fifty and one thousand eight hundred and fifty-one, nor any proceeding for the collection thereof, by sale of the land taxed or otherwise; nor the rights of any person which have accrued or may accrue by reason of any such sale or proceeding, nor the powers of county treasurers in relation to the collection of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, except as provided by sections eighty-nine and ninety, of this act above mentioned; and all taxes heretofore levied or assessed, which have been or shall be hereafter rejected by the comptroller, and shall be hereafter returned to him, after having been duly relaid or reassessed, with corrected descriptions, shall, for the purpose of this act, be deemed to have been levied and assessed in, and to be the taxes of the year in which the tax was so relaid and the description perfected.

## LAWS 1860, CHAP. 209.

AN ACT to amend the act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five.

### *Section Sixty-five Amended.*

SECTION 1. Section sixty-five of the act, entitled "An act in relation to the collection of taxes on lands of

non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five, shall read as follows:

*Conveyance, how Executed; presumption.*

Such conveyance shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the deputy comptroller, surveyor-general or treasurer, and all conveyances hereafter executed by the comptroller, of lands sold by him for taxes, shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of the land, and all notices required by law to be given previous to the expiration of the two years allowed to redeem, were regular according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto. But where the person or persons claiming title under such conveyance, or the grantees or assignees of such persons, shall be in possession of the land described therein, either by himself or themselves, or his or their grantees, assignees, agents, tenants or servants, then such conveyance shall be presumptive evidence of the facts above stated, whatever may be the date of such conveyance.

## LAWS 1862, CHAP. 285.

AN ACT to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five.

*Section Eighty-two Repealed.*

SECTION 1. The eighty-second section of the act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," passed April thirteenth, eighteen hundred and fifty-five, is hereby repealed.

*Comptroller and Employees not to be Interested in Sales.*

§ 2. It shall be unlawful for the comptroller of this state, and for any person employed in the office of such comptroller, to be interested directly or indirectly in any tax sale made by such comptroller, or in the title acquired by such sale, or in any money paid or to be paid for the redemption of any lands sold for taxes or on the concellation of any tax sale; and it shall be unlawful for any person to pay to the comptroller or to any employee in his office, and for the said comptroller or any employee in his office to receive, directly or indirectly any compensation, reward or promise thereof, from any person or persons who are interested in any purchase or purchases of lands sold for taxes, for any service or services performed or to be performed in regard to such sale, redemption, cancellation or such tax title. If any person offend against any provision of this section, he shall be deemed guilty of a misdemeanor; and the sale by the comptroller of any lands in which such person shall be interested contrary to the provision of this section, is hereby declared to be void.

## LAWS 1870, CHAP. 280.

AN ACT to amend an act passed April thirteenth, eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

*Right of Mortgagee to Redeem; Section Repealed.*

SECTION 1. A mortgagee whose mortgage is duly recorded, or the assignee of any mortgage whose assignment is duly recorded, and the personal representatives of such mortgagee or assignee, who shall have filed with the comptroller, as required by law, a notice and description of his mortgage, may, at any time after the

sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six months from the giving of the notice required by section seventy-seven of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," may redeem the said premises so sold, or any part thereof, from the said sale. If the said sale shall have been made by the comptroller, such redemption shall be made by paying to the state treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in the case of redemption by occupants from the date of such certificate; and, if the said sale shall have been made by a county treasurer, or other county officer, the redemption shall be made by paying to the county treasurer the amount for which said lands were sold, with interest at the same rate from the day of sale. The mortgagee or assignee of a mortgage or other person redeeming lands sold for unpaid taxes, as authorized by this section, shall have a lien on the premises so redeemed for the amount paid, with interest thereon from the time of such payment, at and after the rate of seven per centem per annum, in like manner as if the same had been included in the mortgage. Section one of chapter two hundred and eighty-five of the laws of eighteen hundred and sixty-two, entitled "An Act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five," passed April seventeenth, eighteen hundred and sixty-two, is hereby repealed.

*Section Seventy-seven of Chapter* 427, *Laws of* 1855, *Amended.*

§ 2. Section seventy-seven of chapter four hundred and twenty-seven of the laws of eighteen hundred and

fifty-five, mentioned in the first section of this act, is hereby amended by adding thereto these words: "Such notice may be given at any time after the expiration of two years from the last day of such sale."

*Section Eighty-one of Same Act Amended.*

§ 3. Section eighty-one of said chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five is hereby amended by adding thereto the following paragraph:

"A copy of such notice served, together with the affidavit of some person, who shall be certified as credible by the officer before whom such affidavit shall be taken, that such notice was duly served, specifying the mode of service, shall be filed in the office of the comptroller within one month after such service."

## LAWS 1873, CHAP. 120.

AN ACT conferring certain additional powers upon the comptroller.

*Comptroller May Set Aside Cancellation of Sale.*

SECTION 1. The comptroller of the State of New York shall have the power to set aside any cancellation of sale made by him under the provisions of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled, "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes" in either of the following cases: First. Whenever such cancellation was procured by fraud or misrepresentation. Second. Whenever such cancellation was procured by the suppression of any material fact bearing upon the case. Third. Whenever the cancellation was made under a mistake of fact. But the comptroller

shall in all cases specify the particular grounds upon which said cancellation is set aside.

## LAWS 1878, CHAP. 152.

AN ACT further to amend section two of title two of chapter thirteen of part one of the Revised Statutes, entitled, "Of the assessment and collection of taxes," and to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

SECTION 1. Section two of title two of chapter thirteen of part one of the revised statutes, as amended by chapter one hundred and seventy-six of the laws of eighteen hundred and fifty-one, is hereby amended so as to read as follows:

§ 2. Lands occupied by a person other than the owner may be assessed to the occupant, as lands of non-residents, or, if the owner resides in the county in which such lands are located, to such owner.

*Certain Sections of Act Amended.*

§ 2. Sections nine, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-seven, thirty-three, thirty-four, thirty-seven, thirty-eight, forty-one, forty-eight and eighty-six of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, are hereby amended so as to read as follows:

*Lands Imperfectly Described.*

§ 9. Whenever any account of arrears of taxes on lands of non-residents shall be received by the comptroller from a county treasurer, he shall examine

such account and reject all taxes entered thereon, that shall be found to be erroneous, and all taxes found thereon charged on lands erroneously or imperfectly described, and shall credit such county treasurer in a book to be kept by him for that purpose, with the amount of all arrears of taxes which shall be admitted by him.

*Rejected Taxes.*

§ 16. The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise, to each county treasurer, a transcript of the taxes, of the preceding year, assessed in any town or ward in such county, which shall have been rejected by him for any cause whatever, stating therein the cause of such rejection.

*Taxes on Lands Imperfectly Described.*

§ 17. Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office are erroneous, or that they have been assessed on land erroneously described or so imperfectly described that they can not, in his opinion, be located with certainty, he shall cancel such taxes on the books of his office and charge them to the county in which such lands shall lie, with the interest thereon from the first day of March, in the year following that in which the taxes were laid to the first day of February next after such cancellation.

*Transcript to be Delivered to Supervisors.*

§ 18. The comptroller shall also transmit, by mail or otherwise, a transcript of the returns of such taxes, with the addition of such interest, to the proper county treasurer who shall deliver the same to the supervisor

of the town or ward in which such taxes were assessed, by whom it shall be delivered to the board of supervisors at their next meeting. If the town or ward, in which such taxes were originally assessed shall have been divided since such assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

*Description of Lands to be Made.*

§ 19. Whenever the comptroller shall have rejected any tax in the first instance, or have cancelled and charged the same to a county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate, shall, if in his power, add to the assessment-roll of such town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands and the correct amount of taxes thereon, stating the tax of each year, and each kind of tax, separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and, if necessary, he may cause a survey and map of each lot or parcel returned for more perfect description to be made and the expense of such survey and map shall be a charge upon such land to be added to the tax thereon, and the board of supervisors shall direct the collection of such taxes and expenses so added to such assessment-roll, and they shall, for all the purpose of this act, be considered as the taxes of the year in which the description shall be perfected. If the supervisor of such town or ward shall not have fully complied with the requirements of this section, the comptroller shall not thereafter admit, but shall reject all such reassessed, cancelled or rejected taxes as may be returned to him.

*If not Made, Tax to be Assessed upon Town.*

§ 20. If the correct amount of such taxes and an accurate description of such lands shall not have been added, by such supervisor, to the assessment-roll of his town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, the board of supervisors shall cause such arrears of taxes and the interest thereon, to be levied on the valuations of the estates, real and personal, of the town or ward in which such taxes were originally assessed, and shall direct the same to be collected with the other taxes of the same year.

*Where Town or Ward since Divided.*

§ 21. If the town or ward in which such taxes were originally assessed shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns and wards included in the limits of such original towns or wards in such equitable manner as they may deem proper.

*Certificate of Taxes Due.*

§ 27. The comptroller shall, from time to time, give to any person desiring to pay the taxes, interest and charges due on any tract, piece or parcel of land, a certificate of the amount of such taxes, interest and charges ; and the state treasurer may receive such taxes, interest and charges and give a receipt therefor upon such certificate, which shall be countersigned by the comptroller, and entered in the books of his office.

*Land, when to be Sold.*

§ 33. Whenever any tax charged on lands returned to the comptroller, and the interest thereon shall remain unpaid for two years from the first day of May, follow-

ing the year in which the same was assessed, the comptroller shall, as soon thereafter as he shall deem it for the best interests of the state, proceed to advertise and sell such lands in the manner hereinafter provided.

*List of Lands and Notices of Sale.*

§ 34. He shall make out a list or statement of the lands charged with such tax and interest and so liable to be sold, and shall cause so many copies thereof to be printed as shall be sufficient to furnish each county treasurer with at least five copies, and each town and city clerk with at least two copies, and shall transmit to each county treasurer such number of said copies as shall be equal to five copies for such county treasurer and two copies for each town and city clerk in his county. And the comptroller shall also make and cause to be printed and published in two public newspapers to be selected by him in each county, once in each week, for ten successive weeks prior to the commencement of the sale, a list or statement of all the lands in such county charged with such tax and interest. Such publication shall be in the body of each newspaper, and not in a supplement. If there shall not be two newspapers, known to the comptroller, published in any county, such list or statement shall be published as required above, in the two newspapers which the comptroller shall believe to be most generally circulated in such county. But no error in the printed description in such newspapers shall vitiate or in any manner affect the validity of such sale; and all expenses of printing such lists or statements shall be audited by the comptroller, and paid out of the treasury of this state, on receiving one copy of the newspaper containing the same, with an affidavit of the publication of such list or statement according to the provisions of this section, to be made by the printer, publisher or some other

person to whom the fact of such publication shall be known.

*Expenses, how Charged.*

§ 37. The expenses incurred by the state in printing and transmitting any list of lands liable to be sold for taxes, and in publishing notices of sale and lists or statements of such lands, shall be charged on the lands mentioned in such lists; and an equal part of such expense shall be estimated and apportioned by the comptroller and charged on each of the several tracks or parcels of such land.

*Copies in Treasurer's Office.*

§ 38. Each county treasurer shall retain in his office five of the copies of the list or statement of lands to be sold, transmitted to him, and shall permit all persons at all reasonable hours to examine the same, and shall cause the remaining copies to be delivered to the town and city clerks.

*General Notice.*

§ 41. After transmitting such lists to the county treasurers, the comptroller shall cause to be published, once in each week, for twelve weeks successively, in two newspapers in or for each county, to be selected by him in the same manner as is provided in section thirty-four of this act for selecting newspapers to publish the lists of lands liable to be sold, a general notice, stating that a list of all the lands liable to be sold for taxes has been forwarded to each of the county treasurers and town and city clerks in this state, and that so much of said lands as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of sale, will, on a day to be mentioned in such notice, and the succeeding days be sold at public auction at the capitol in the city of Albany.

*New Certificate of Sale.*

§ 48. When the comptroller shall have cancelled any sale in the manner provided in section forty-seven of this act, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable therefor by the original purchaser in case the said sale had not been cancelled, or if such certificate can not be sold, he may transfer the same to the people of the state; but in all cases where the people of the state becoming the purchasers by such transfer, the whole quantity of land liable to sale for the purchase-money mentioned in such certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale.

*Expenses of Sale.*

§ 86. The expenses attending the sales for taxes made under this act, including a due proportion of the expenses of printing and publishing lists and notices and transmitting copies thereof, not hereinbefore provided for, shall be a charge on the lands out of which the sales are made, and an equal part of such expense shall be estimated by the comptroller, and added to the taxes, interest and other charges on each parcel of land out of which a sale may be made.

## LAWS 1881, CHAP. 402.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

*Section Forty-three Amended.*

SECTION 1. Section forty-three of chapter four hundred and twenty-seven of the laws of eighteen hundred

and fifty-five, entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as as to read as follows:

*Comptroller may Apply for Maps; Lists to be Transmitted.*

§ 43. 1. Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made shall furnish such maps, at the expense of the county, if they can be procured, and if not, they shall then furnish such descriptions of the lands as they can obtain, with a statement of the quantity in each subdivision, if the same be divided.

2. It shall be the duty of the treasurer of each of the counties of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk and Sullivan, and of every other county for which there may, at the time, be a special law authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon and by and under the provisions of which such taxes are not to be returned to the comptroller, and he is hereby required to transmit to the comptroller, at least one month prior to any state tax sale, a certified list and statement of all lands bid in the name of his county at, or transferred to his county from, any tax sale, or to which his said county may have acquired tax title, the deed for which has not been recorded in the office of the clerk of his said county, which may then be liable to be sold at said sale.

3. It shall be the duty of the clerk of each of the several counties of this state, and he is hereby required

to transmit to the comptroller, on the receipt of a list of the lands liable to be sold at any state tax sale, and at least one month prior to such sale, a certified list of all lands then on record in his office, or lands the deeds for which are in his office for record, then owned by his said county, and liable to be sold at such sale.

*Section Forty-four Amended.*

§ 2. Section forty-four of said act is hereby amended so as to read as follows:

*Comptroller to Sell Lands.*

§ 44. On the day mentioned in the notices, the comptroller shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel shall be sold as will be sufficient to pay all the taxes due thereon for the years for the taxes of which said sale shall be made, with the interest and charges thereon; but no lot, piece or parcel of land against which the people of the state of New York then hold a bond or lien, for any part of the purchase-money thereof, or unpaid interest thereon, shall be sold at such sale.

*Section* 48 *Amended.*

§ 3. Section forty-eight of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, as amended by chapter one hundred and fifty-two of the laws of eighteen hundred and seventy-eight is hereby amended so as to read as follows:

*Cancelled Certificates; Re-sale.*

§ 48. When the comptroller shall have cancelled any sale in the manner provided in section forty-seven of this act, he may issue a certificate of such sale to any other person who will pay the amount for such certifi-

cate which would be payable therefor by the original purchaser, in case the said sale had not been cancelled, or, if such certificate can not be sold, he shall transfer the same, if the land described thereon is in the county of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk, Sullivan or any other county for which there may, at the time, be a special law authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon, and by and under the provisions of which such taxes are not to be returned to the comptroller, to said county in which said land is located; but if it be located in any other county, he shall, in such case, transfer the same to the people of the state; but in all cases where either a county or the people of the state became the purchaser by such transfer the whole quantity of land liable to sale for the purchase-money mentioned in such certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale.

*Section Fifty Amended.*

§ 4. Section fifty of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five is hereby amended so as to read as follows:

*Redemption of Lands Sold for Taxes; Lands not to be Despoiled.*

§ 50. The owner or occupant of any land so sold for taxes, or any other person, may redeem the same, as hereinafter provided, at any time within two years after the last day of such sale, by paying to the state treasurer, on the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate of sale therefor, with interest thereon at the rate of ten per centum per annum, from the date of such certificate of sale; but until such redemption shall be made, neither such owner nor occupant, nor any other person, shall have any right to de-

spoil such land of its value by the destruction or removal of any building, or by the cutting, removal or destruction of timber or other valuable products growing, existing, or being thereon. The purchaser of any wild, vacant or unoccupied land at such sale, or the assigns of such purchaser, shall have no right or authority to enter upon or exercise acts of ownership over such land, until the expiration of the two years allowed for the redemption thereof from such sale; but such purchaser, whose bid therefor shall have been fully paid, or the assignee or representative of such purchaser at such sale may, at any time within twenty-three months from the last day of said sale, serve, or cause to be served, a notice on any person despoiling said land, or any person interested in such despoilation; which notice may be served personally or by leaving the same at the residence of such person with any member of his family of suitable age and discretion, and shall state that such land, describing it substantially as sold, was sold for taxes by the comptroller, and that unless the said land be redeemed within one month from the date of the service of such notice, an action to recover the value of the buildings or products destroyed or removed therefrom from the date of the said sale thereof will be instituted against any or all persons concerned in such depredations. And, if such land shall not be redeemed from said sale within one month from the day of the service of such notice, then the person or persons engaged or interested in making such depredations shall be liable, if adjudged guilty by the court before which such action is held to pay to the holder of the said tax sale certificate therefor, the full value of any building so destroyed or removed therefrom, and of the timber, bark or other products so cut, destroyed or removed therefrom, from the date of the said tax sale of said land to the termination of said action.

*Section Sixty-six Amended.*

§ 5. Section sixty-six of said act is hereby amended so as to read as follows:

*When Comptroller to Bid in; Certificates; Deeds.*

§ 66. 1. It shall be the duty of the comptroller, at any tax sale held by him, to bid in for the state all lands liable to sale thereat then belonging to the state or that are then mortgaged to the commissioners for loaning certain moneys of the United States; and to bid in for each of the counties of the state all other lands liable to be sold thereat then belonging to said counties, respectively, and also all lands which may have been bid in by or for said counties, respectively, at any tax sale which has not been cancelled, or from which said lands may not have been duly redeemed, and to reject any and all other bids which may be made for any or all of said lands.

2. It shall further be the duty of the comptroller, at any such sale, to bid in for each of the counties of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk and Sullivan, and for all other counties for which there may at the time be special laws authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon and by and under the provisions of which such taxes are not to be returned to the comptroller, respectively, every lot of land in each of said counties, respectively, liable to be sold at said sale, for which no person shall offer to bid, and to bid in for the state every other lot of land liable to be sold at said sale for which no person shall so offer to bid.

3. Certificates of sale for all lands bid in by the comptroller under the provisions of subdivisions one and two of this section shall be made by the comptroller, which shall describe the lands purchased and

specify the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals.

4. The comptroller shall charge to each county, respectively, on the books of his office, the amount for which it may be liable, by reason of any and all purchases made in accordance with the preceding provisions of this section. Such amount shall become due on the last day of each tax sale, respectively, and shall be payable in the same manner as the state tax is now required by law to be paid.

5. The comptroller shall, as soon as practicable after each tax sale, transmit the certificates of sale for said lands to the treasurer of each of said counties respectively, on receipt of which, said treasurer shall enter the same, in their proper order, in a book to be provided by him for such purpose, and shall have, unless otherwise directed by the board of supervisors of his county, full power and authority, until the expiration of two years from the last day of said sale, to sell and assign any or all of said certificates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described thereon was sold at said tax sale, with interest thereon from the date of such tax sale to the date of such sale and assignment by him. Any such sale and assignment shall be duly and fully entered by such county treasurer in the book aforesaid, which book shall be a part of the records of the county.

6. In case said tax sale certificate or certificates shall not have been sold or assigned by the respective

county treasurers on or before the expiration of two years from the last day of said sale, each of said county treasurers shall then transmit such unsold certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all the lands described thereon then remaining unredeemed, or the sale of which has not been cancelled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined on by a majority of such board at any regular or special meeting thereof.

*Inconsistent Acts Repealed.*

§ 6. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

## LAWS 1885, CHAPTER 448.

AN ACT to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

*Section Sixty-five of Act Amended.*

SECTION 1. Section sixty-five of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as read as follows:

*Comptroller to Execute Conveyance; Evidence.*

§ 65. Such conveyances shall be executed by the comptroller, under his hand and seal, and the execution

thereof shall be witnessed by the treasurer or deputy comptroller, and all such conveyances that have been heretofore executed by the comptroller, and all conveyances of the same lands by his grantee or grantees therein named, after having been recorded for two years in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller that shall have remained in force for two years after the last day allowed by law to redeem from such sale shall, six months after this act takes effect, be conclusive evidence that the sale and all proceedings prior thereto, from and including the assessment of the land and all notices required by law to be given previous to the expiration of the two years allowed by law to redeem, were regular and were regularly given, published and served according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto, and all other conveyances or certificates heretofore or hereafter executed or issued by the comptroller, shall be presumptive evidence of the regularity of all the said proceedings and matters hereinbefore recited, and shall be conclusive evidence thereof from and after the expiration of two years from the date of recording such other conveyances or of four years from and after the date of issuing such other certificates. But all such conveyances and certificates and the taxes and tax sales on which they are based, shall be subject to cancellation, as now provided by law, on a direct application to the comptroller or an action brought before a competent court therefor, by reason of the legal payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid.

*Act Applicable Only to Certain Counties.*

§ 2. The provisions of this act are hereby made applicable only to the following counties, namely: Clinton, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Sullivan, Ulster, Warren and Washington, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken, or application duly made within six months thereafter for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder.

[This section amended by L. 1891, ch. 217, and L. 1893, ch. 398; pages 89 and 92, *infra*.]

## LAWS 1885, CHAP. 453.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

*Section Four of Act Amended.*

SECTION 1. Section four of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes," is hereby amended so as to read as follows:

*Return of Unpaid Taxes on Non-resident Lands; Evidence.*

§ 4. Whenever any county treasurer shall receive from a collector an account of unpaid taxes assessed on lands of non-residents, such county treasurer shall

compare the same with the original assessment-roll to which the collector's warrant is attached, which rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof he shall add to it a certificate showing that he has examined and compared the account with said roll and found the same to be correct; and after crediting the collector with the amount, shall, before the first day of April next ensuing, transmit the account and collector's affidavit to the comptroller, with a certificate that he has compared the account with the entries of the same taxes in the original assessment-roll to which the collector's warrant is attached, and has found the same to be a true transcript of such roll. The comptroller may, before admitting any taxes thereon, return such accounts to the respective county treasurers for correction or completion, which must be returned to him within one month thereafter, or as the comptroller may otherwise direct, and such account, when accepted by the comptroller, shall be deemed conclusive evidence of the regularity and validity of all taxes thereon which may be admitted by him and of all prior proceedings in assessing the lands and levying and collecting such taxes, except in cases when it shall be satisfactorily proven to the comptroller that any such tax was duly paid in the county, or was levied on an assessment of land by a town or ward having no legal right to assess the same, or arose from a double assessment, the taxes levied on one of which were duly paid.

*Section Twenty-two Amended.*

§ 2. Section twenty-two of said chapter is hereby amended so as to read as follows:

*Cancellation of Tax; Relevy; Evidence.*

§ 22. Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was, pre-

viously to such return, paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall also have been paid into the state treasury, he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made. Whenever any unpaid tax, levied upon an assessment of land by a town or ward having a legal right to assess the same, which may have been returned to and admitted by the comptroller, shall be ascertained, either before or after sale therefor, to be illegal or void by reason of any irregularity or defect in, or omission of, statutory requirements for creating or collecting such tax, the comptroller is hereby empowered and directed, whenever deemed practicable by him, to relevy the correct amount of such tax and add thereto the five per cent allowed by law to be added by the collector, which aggregate amount of tax and charge, with interest thereon at ten per cent per annum from the first day of August following the admission of such illegal or void tax, shall thereupon be due and payable, and shall be subject to existing provisions of law governing the collection of and sale for unpaid taxes by the comptroller; but no tax arising from a double assessment, the taxes levied on one of which shall be satisfactorily proven to the comptroller to have been duly paid, shall be subject to such relevy. Such relevy of any invalid or defective tax shall be conclusive evidence of its regularity and legality, and any such tax, so relevied, shall be treated and subject to payment as though such sale had not been made, and, if allowed to remain unpaid, the land shall be sold therefor.

*Section Seventy-four Amended.*

§ 3. Section seventy-four of said chapter is hereby amended so as to read as follows:

*Redemption after Sale.*

§ 74. The occupant of any such lot, or any other person, may, at any time before the service of said notice by the purchaser, or the the* person claiming under him, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and a half per cent. thereon, together with the sum paid for a deed, if any, and such amounts as may have been paid to the state for subsequent taxes thereon, or for redemptions from subsequent tax sales thereof, and, in addition thereto, providing such lot has been legally exempt from taxation for one or more years subsequent to the sale in question, of a sum that would represent the gross amount of taxes, and interest that would have been due thereon, providing it had been taxed, during each of the years it may have been so exempt, on its assessed valuation, and at the rate per cent. of taxation thereon for the year when last returned to the comptroller's office.

*Additional Section.*

§ 3. Said chapter is hereby amended by the addition thereto of the following section :

*After Advertisement, Lands to be Deemed in Possession of State.*

§ 93. From and after the advertisement, once a week for three successive weeks, of a list of wild, vacant or forest lands, to which the state holds title from a tax sale or otherwise, in one or more newspapers to be selected by the comptroller, published in the county in which such lands may be located, all of such wild,

* So in the original.

vacant or forest lands shall be deemed, and are hereby declared to be, in the actual possession of the comptroller of this state; and such possession shall be deemed to continue until he has been dispossessed by the judgment of competent tribunal.

[Repealed by chap. 711 of 1893, but re-enacted as section 13 of that act. See page 104, *infra*.]

*Act not Applicable to Certain Counties.*

§ 5. The provisions of this act shall not apply to the counties of Cattaraugus and Chautauqua.

## LAWS 1890, CHAP. 556.

AN ACT further to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes."

*Section Seventy-four of Act Amended.*

SECTION 1. Section seventy-four of chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled "An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes, as amended by chapter four hundred and fifty-three of the laws of eighteen hundred and eighty-five, is hereby further amended so as to read as follows:

*Redemption of Lands by Occupant.*

§ 74. The occupant of any such lot, or any other person may at any time before the service of said notice by the purchaser or the person claiming under him, and within three years from the expiration of the two years allowed by law for the redemption thereof, redeem any lands so occupied, by

filing in the office of the comptroller satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and one-half per centum thereon together with the sum paid for a deed, if any, and such amount as may have been paid to the state for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and, in addition thereto, providing such lot has been legally exempt from taxation for one or more years subsequent to the sale in question, of a sum that would represent the gross amount of taxes and interest that would have been due thereon, providing it had been taxed during each of the years it may have been exempt, on its assessed valuation, and at the rate per cent of taxation thereon for the year when last returned to the comptroller's office. In all cases of tax sales heretofore made by the comptroller, where the land sold was in the actual occupancy of any person at the expiration of the two years allowed for the redemption thereof, and the purchaser or the person claiming under him shall have failed to serve notice of such sale on the occupant or occupants thereof and to file evidence of such service in the comptroller's office, as provided by section sixty-eight of this act, and the occupant or any other person shall fail to file in the comptroller's office within one year after this act shall take effect, a written notice of such occupancy together with an application for the redemption of such lands, and to furnish the comptroller with satisfactory evidence of the occupancy required and make such redemption within two years after this act shall take effect, then, and in all such cases, the said tax sale of such land, and the conveyance thereof by the comptroller, shall become absolute, and the occupant and occupants and all other persons interested in the said lands shall be forever barred from all right and title thereto.

*Inconsistent Acts Repealed.*

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

## LAWS 1891, CHAP. 217.

AN ACT to amend chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An Act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An Act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes.'"

*Act Amended.*

SECTION 1. Section two of chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An Act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An Act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes,'" is hereby amended so as to read as follows:

*Application of Act.*

§ 2. The provisions of this act are hereby made applicable to all the counties in this state, except the counties of Cattaraugus and Chautauqua, but shall not affect any action, proceeding or application pending at the time of its passage; nor any action that shall be begun, proceeding taken or application duly made within six months thereafter, for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder. All applications heretofore or hereafter made to the comptroller for the cancellation of any tax sale by any person interested in the event

thereof, shall be heard and determined by him, and his determination shall be subject to review by certiorari, or otherwise. The provisions of this act shall also be applicable to all conveyances made by county treasurers or county judges and to all outstanding certificates from county treasurers' sales.

*Proceedings Barred.*

§ 2. Nothing herein contained shall be construed to permit a proceeding to be begun or application to be made which is already barred by the provisions of the act hereby amended.

## LAWS 1892, CHAP. 463.

AN ACT in relation to the redemption of lands sold at tax sales prior to the year eighteen hundred and ninety.

*Time Extended for Action on Application for Redemption.*

SECTION 1. In all cases in which a written notice of occupancy, together with an application for the redemption from any tax sale made prior to the year eighteen hundred and ninety, of any lands sold thereat for taxes, was filed in the comptroller's office on or before June seventh, eighteen hundred and ninety-one, in pursuance of the provisions of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety, and proof tending to show the actual occupancy of such lands, as provided by said act, has been filed or may be filed in said office on or before June seventh, eighteen hundred and ninety-two, affidavits and proof in opposition to such application may be presented to the comptroller at any time prior to September first, eighteen hundred and eighty-two, and the time within which the comptroller can take action

on and allow or reject such applications for redemption, and the time within which such redemptions as are allowed by the comptroller can be made, is hereby extended to December first, eighteen hundred and ninety-two.

*Inconsistent Acts Repealed.*

§ 2. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

## LAWS 1892, CHAP. 624.

AN ACT to confirm tax proceedings under chapter two hundred and ninety-eight of the laws of eighteen hundred and fifty.

*Tax Sales in Certain Counties Confirmed.*

SECTION 1. All tax sales made by the county treasurers of Lewis, Hamilton, Franklin and Herkimer counties, under and in pursuance of chapter two hundred and ninety-eight of the laws of eighteen hundred and fifty, passed April tenth (for the sale of lands in the counties where they were assessed), and all certificates of sale made and delivered by him to any purchaser of any lands at any such sale, and all deeds, executed by such treasurer and the county judge of such county, of any real estate so sold to the purchaser, his heirs or assigns, under and in pursuance of said act, are hereby legalized, confirmed and made valid. Said certificates and deeds respectively shall be received and held in all proceedings as conclusive evidence of a complete title; except that the owner of any real estate so sold, may show that said tax was imposed, and the proceedings to enforce it, were without jurisdiction.

## LAWS 1893, CHAP. 398.

AN ACT to further amend chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An Act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An Act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes.'"

*Act Amended.*

SECTION 1. Section two of chapter four hundred and forty-eight of the laws of eighteen hundred and eighty-five, entitled "An Act to amend chapter four hundred and twenty-seven of the laws of eighteen hundred and fifty-five, entitled 'An act in relation to the collection of taxes on lands of non-residents and to provide for the sale of such lands for unpaid taxes,'" as amended by chapter two hundred and seventeen of the laws of eighteen hundred and ninety-one, is hereby further amended so as to read as follows:

§ 2. The provisions of this act are hereby made applicable to all the counties in this state, except the counties of Cattaraugus and Chautauqua but shall not affect any action, proceeding or application pending at the time of the passage of the act hereby amended, nor any action begun, proceedings taken, or application duly made within six months thereafter, for the purpose of vacating any tax sale or any conveyance or certificate of sale made thereunder.

*Saving Clause.*

§ 2. Nothing contained in this act shall be construed to affect any action or proceeding now pending in any court of record, for the purpose of reviewing any determination of the comptroller of the state of New York.

## LAWS 1883, CHAP. 13.

AN ACT to prohibit sales of lands belonging to the state in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence and Warren.

SECTION 1. Hereafter and from the passage of this act no sales shall be made of lands belonging to the state situated in the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence and Warren.

§ 2. Nothing in this act shall be construed as prohibiting the commissioners of the land office from conveying lands heretofore contracted to be sold, and not yet conveyed, to the purchasers thereof.

## LAWS 1885, CHAP. 283.

AN ACT to establish a forest commission, and to define its powers and duties and for the preservation of forests.

SECTION 1. There shall be a forest commission which shall consist of three persons who shall be styled forest commissioners, and who may be removed by the governor for cause. The forest commissioners shall be appointed by the governor by and with the advice and consent of the senate.

§ 2. At the first meeting of the forest commissioners they shall divide themselves by lot, so that the term of one shall expire in two years, one in four years, and one in six years from the first day of February next ensuing. Except as to the three terms of office thus determined, the term of office of a forest commissioner shall be six years from the first day of February on which the preceding term expires.

§ 3. During the month of January, in the year eighteen hundred and eighty-eight, and in every second year thereafter, the governor by and with the advice and consent of the senate shall appoint one forest commissioner. Vacancies that may exist in the office of a forest commissioner after the commencement of a term of office shall be filled by the governor's appointment subject to the confirmation of the senate at its next session for the unexpired portion of the term in which the vacancy occurs.

§ 4. The forest commissioners shall serve without compensation except that there shall be paid them their reasonable expenses incurred in the performance of their official duties.

§ 5. The forest commission shall have power to employ a forest warden, forest inspectors, a clerk and all such agents, as they may deem necessary, and to fix their compensations, but the expenses and salaries of such warden, agents, clerk, inspectors and assistants shall not exceed in the aggregate with the other expenses of the commission the sum therefor appropriated by the legislature.

§ 6. The trustees of public buildings, under chapter three hundred and forty-nine, laws of eighteen hundred and eighty-three, shall provide rooms for office for the forest commission, with proper furniture and fixtures, and with warming and lights.

§ 7. All the lands now owned or which may hereafter be acquired by the state of New York, within the counties of Clinton, excepting the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall constitute and be known as the forest preserve.

§ 8. The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands.

They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.

§ 9. The forest commission shall have the care, custody, control and superintendence of the forest preserve. It shall be the duty of the commission to maintain and protect the forests now on the forest preserve, and to promote as far as practicable the further growth of forests thereon. It shall also have charge of the public interests of the state, with regard to forests and tree planting, and especially with reference to forest fires in every part of the state. It shall have as to all lands now or hereafter included in the forest preserve, but subject to the provisions of this act, all the powers now vested in the commissioners of the land office and in the comptroller as to such of the said lands as are now owned by the state. The forest commission may, from time to time, prescribe rules or regulations and may, from time to time, alter or amend the same, affecting the whole or any part of the forest preserve, and for its use, care and administration; but neither such rules or regulations, nor anything herein contained shall prevent or operate to prevent the free use of any road, stream of water as the same may have been heretofore used or as may be reasonably required in the prosecution of any lawful business.

§ 10. The forest warden, forest inspectors, foresters and other persons acting upon the forest preserve under the written employment of the forest warden or of the forest commission may, without warrant, arrest any person found upon the forest preserve violating any of the provisions of this act; but in case of such arrest, the person making the arrest shall forthwith take the person arrested before the nearest magistrate having jurisdiction to issue warrants in such case, and there make, or procure to be made, a complaint in writing, upon which complaint the magistrate shall act as the case may require.

§ 11. The forest commission may bring in the name, or on behalf of the people of the state of New York, any action to prevent injury to the forest preserve or trespass thereon, to recover damages for such injury or trespass, to recover lands properly forming part of the forest preserve, but occupied or held by persons not entitled thereto, and in all other respects for the protection and maintenance of the forest preserve, which any owner of lands would be entitled to bring. The forest commission may also maintain, in the name or on behalf of the people of the state, an action for the trespass specified in section seventy-four, article fifth, title five, chapter nine, part one of the revised statutes, when such trespass is committed upon any lands within the forest preserve. In such action there shall be recoverable the same penalty, and a like execution shall issue, and the defendant be imprisoned thereunder without being entitled to the liberties of the jail, all as provided in sections seventy-four and seventy-six of the said article; and in such action the plaintiff shall be entitled to an order of arrest before judgment as in the cases mentioned in section five hundred and forty-nine of the code of civil procedure. The trespass herein mentioned shall be deemed to include, in addition to the acts specified in the said section seventy-four, any act of cutting or causing to be cut, or assisting to cut, any tree or timber standing within the forest preserve, or any bark thereon, with intent to remove such tree or timber, or any portion thereof, or bark therefrom, from the said forest preserve. With the consent of the attorney-general and the comptroller, the forest commission may employ attorneys and counsel to prosecute any such action, or to defend any action brought against the commission or any of its members or subordinates arising out of their or his official conduct with relation to the forest preserve. Any attorney or counsel so employed shall act

under the direction of and in the name of the attorney-general. Where such attorney or counsel is not so employed, the attorney-general shall prosecute and defend such actions.

§ 12. In an action brought by or at the instance of the forest commission, an injunction, either preliminary or final, shall, upon application be granted, restraining any act of trespass, waste or destruction upon the forest preserve.

§ 13. Whenever the state owns or shall own an undivided interest with any person in any lands within the counties mentioned in section eight of this act, or is or shall be in possession of any such lands as joint tenant or tenants in common with any person who has an estate of freehold therein, the attorney-general shall, upon the request of the forest commission, bring an action in the name of the people of the state of New York for the actual partition of the said lands according to the respective rights of the parties interested therein; and upon the consent in writing of the forest commission any such person may maintain an action for the actual partition of such lands, according to the respective rights of the parties interested therein, in the same manner as if the state were not entitled to exemption from legal proceedings, service of process in such action upon the attorney-general to be deemed service upon the state. Such actions, the proceedings and the judgment therein, and the proceedings under the judgment therein shall be according to the practice at the time prevailing in actions of partition and shall have the same force and effect as in other actions, except that no costs shall be allowed to the plaintiff in such action, and except that no sale of such lands shall be adjudged therein. The forest commission may, without suit, but upon the consent of the comptroller, agree with any person or persons owning lands within

the said towns jointly or as tenants in common with the state for the partition of such lands, and upon such agreement and consent, the comptroller shall make on behalf of the people of the state any conveyance necessary or proper in such partition, such conveyance to be forthwith recorded as now provided by law as to conveyances made by the commissioners of the land office.

§ 14. All income that may hereafter be derived from state forest lands shall be paid over by the forest commission to the treasury of the state.

§ 15. A strict account shall be kept of all receipts and expenses, which account shall be audited by the comptroller, and a general summary thereof shall be reported annually to the legislature.

§ 16. The forest commission shall, in January of every year, make a written report to the legislature of their proceedings, together with such recommendations of further legislative or official action as they may deem proper.

§ 17. The supervisor of every town in the state in which wild or forest lands belonging to the state are located, except within the counties mentioned in section seven of this act, shall be by virtue of his office the protector of these lands, subject to the instructions he may receive from the forest commission. It shall be his duty to report to the district attorney for prosecution any acts of spoliation or any injury that may be done, and it shall be the duty of such district attorney to institute proceedings for the prevention of further trespass, and for the recovery of all damages that may have been committed, with costs of prosecution. The supervisors shall also report their proceedings therein to the forest commission. In towns where the forest commission shall deem it necessary, they may serve a notice upon the supervisor, requiring him to appoint one or more forest guards, and if more than one in a

town, the district of each shall be properly defined. The guard so appointed shall have such powers, and perform such duties and receive such pay as the forest commission may determine.

§ 18. The forest commission shall take such measures as the department of public instruction, the regents of the university and the forest commission may approve, for awakening an interest in behalf of forestry in public schools, academies and colleges of the state, and of imparting some degree of elementary instruction upon this subject therein.

§ 19. The forest commission shall, as soon as practicable, prepare tracts or circulars of information giving plain and concise advice for the care of woodlands upon private lands, and for the starting of new plantations upon lands that have been denuded, exhausted by cultivation, eroded by torrents, or injured by fire, or that are sandy, marshy, broken, sterile or waste, and unfit for other use. These publications shall be furnished without cost to any citizen of the state, upon application, and proper measures may be taken for bringing them to the notice of persons who would be benefited by this advice.

§ 20. Every supervisor of a town in this state, excepting within the counties mentioned in section seven of this act, shall be ex-officio fire warden therein. But in towns particularly exposed to damages from forest fires, the supervisor may divide the same into two or more districts, bounded as far as may be by roads, streams of water, or dividing ridges of land or lot lines, and he may, in writing, appoint one resident citizen in each district as district fire warden therein. A description of these districts and the names of the district fire wardens thus appointed shall be recorded in the office of the town clerk. The supervisor may also cause a map of the fire district of his town to be posted in some public place with the names of the district fire

wardens appointed. The cost of such map, not exceeding five dollars, may be made a town charge; and the services of the fire wardens shall also be deemed a town charge and shall not exceed the sum of two dollars per day for the time actually employed. Within the counties mentioned in section seven of this act, such persons shall be fire wardens as may from time to time be appointed by the forest commission. The persons so appointed shall act during the pleasure of the forest commission; and there shall be applicable to them all the provisions of this act, with reference to supervisors and district town wardens. Upon the discovery of a forest fire, it shall be the duty of the fire warden of the district, town or county to take such measures as may be necessary for its extinction. For this purpose he shall have authority to call upon any person in the territory in which he acts for assistance, and any person shall be liable to a fine of not less than five nor more than twenty dollars for refusing to act when so called upon.

§ 21. The forest commission, the forest warden, the forest inspector, the foresters, and any other person employed by or under authority of the forest commission, and who may be authorized by the commission to assume such duty, shall within the counties mentioned in section seven of this act, whenever the woods in any such town shall be on fire, perform the duty imposed upon, and in such case shall have the powers granted to the justices of peace, the supervisors and the commissioner of highways of such town by title fourteen of chapter twenty of part one of the revised statutes, with reference to the ordering of persons to assist in extinguishing fires or stopping their progress; and any person so ordered by the forest commission, the forest warden, the forest inspectors, the foresters, or any of them, or any other person acting or authorized as aforesaid who shall refuse or neglect to comply with any

such order, shall be liable to the punishment prescribed by the said title.

§ 22. No action for trespass shall be brought by any owner of land for entry made upon his premises by persons going to assist in extinguishing a forest fire, although it may not be upon his land.

§ 23. The fire wardens, or the supervisor, where acting in general charge, may cause fences to be destroyed or furrows to be plowed to check running fires, and in cases of great danger, back-fires may be set along a road or stream or other line of defense, to clear off the combustible material before an advancing fire.

§ 24. The supervisor of every town of which he is a fire warden, as aforesaid, and in which a forest fire of more than one acre in extent has occurred within a year, shall report to the forest commission the extent of the area burned over, to the best of his information, together with the probable amount of property destroyed, specifying the value of timber, as near as may be, and amount of cord wood, logs, bark or other forest product, and of fencing, bridges and buildings that have been burned. He shall also make enquiries and report as to the causes of these fires, if they can be ascertained, and as to the measures employed and found most effectual in checking their progress. A consolidated summary of these returns by counties and of the information as to the same matter otherwise gathered by the forest commission shall be included in the annual report of the forest commission.

§ 25. Every railroad company whose road passes through waste or forest lands, or lands liable to be overrun by fires within this state, shall twice in each year cut and burn off or remove from its right of way all grass, brush or other inflammable material, but

under proper care, and at times when the fires thus set are not liable to spread beyond control.

§ 26. All locomotives which shall be run through forest lands shall be provided, within one year from the date of this act, with approved and sufficient arrangements for preventing the escape of fire from their furnace or ashpan, and netting of steel or iron upon their smoke-stack to check the escape of sparks of fire. It shall be the duty of every engineer and fireman employed upon a locomotive to see that the appliances for the prevention of the escape of fire are in use and applied, as far as it can be reasonably and possibly done.

§ 27. No railroad company shall permit its employees to deposit fire coals or ashes upon their track in the immediate vicinity of woodlands or lands liable to be overrun by fires, and in all cases where any engineers, conductors or trainmen discover that fences along the right-of-way, on woodlands adjacent to the roads are burning, or in danger from fire, it shall be their duty to report the same at their next stopping place, and the person in charge of such station shall take prompt measures for extinguishing such fires.

§ 28. In seasons of drought, and especially during the first dry time in the spring and after the snows have gone and before vegetation has revived, railroad companies shall employ a sufficient additional number of trackmen for the proper extinguishment of fires. And where a forest fire is raging near the line of their road they shall concentrate such help and adopt such measures as shall most effectually arrest their progress.

§ 29. Any railroad company violating the provisions or requirement of this act shall be liable to a fine of one hundred dollars for each offense.

§ 30. The forest commission shall, with as little delay as practicable, cause rules for the prevention and suppression of forest fires to be printed for posting in school-houses, inns, saw-mills, and other wood-working establishments, lumber camps and other places, in such portions of the state as they may deem necessary. Any person maliciously or wantonly defacing or destroying such notices shall be liable to a fine of five dollars. It shall be the duty of forest agents, supervisors and school trustees to cause these rules, when received by them, to be properly posted, and replaced when lost or destroyed.

§ 31. Any person who shall willfully or negligently set fire to, or assist another to set fire to, any waste or forest lands belonging to the state or to another person, whereby the said forests are injured or endangered, or who suffers any fire upon his own land to escape or extend beyond the limits thereof, to the injury of the woodlands of another or of the state, shall be liable to a fine of not less than fifty dollars nor more than five hundred dollars, or to imprisonment of not less thirty days nor more than six months. He shall also be liable in an action for all damages that may be caused by such fires; such action to be brought in any court of this state having jurisdiction thereof.

§ 32. Fifteen thousand dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purposes of this act. And no liabilities shall be incurred by said forest commissioners in excess of this appropriation.

§ 33. This act shall take effect immediately.

## LAWS OF 1893, CHAPTER 711.

AN ACT in relation to the sale and redemption of lands sold for taxes.

(Approved by the Governor May 16, 1893. Passed, three-fifths being present.)

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

* * * * * * * * *

§ 12. EFFECT OF FORMER DEEDS.—Every such conveyance heretofore executed by the comptroller, county treasurer or county judge, and all conveyances of the same lands by his grantee or grantees therein named, which have for two years been recorded in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller, that shall have remained in force for two years after the last day allowed by law for redemption from such sale, shall be conclusive evidence that the sale and proceedings prior thereto, from and including the assessment of the lands, and all notices required by law to be given previous to the expiration of the time allowed for redemption, were regular and were regularly given, published and served, according to the provisions of all laws directing and requiring the same or in any manner relating thereto, but all such conveyances and certificates, and the taxes and tax values on which they are based, shall be subject to cancellation, on direct application to the comptroller, or in an action brought before a competent court therefor by reason of the payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid, or by reason of any defect in the proceedings affecting the jurisdiction upon constitutional grounds.

Sec. 13. POSSESSION OF LANDS BY THE STATE.—The comptroller may advertise once a week for at least three weeks successively, a list of the wild, vacant and

forest lands to which the state holds title, from a tax sale or otherwise, in one or more newspapers to be selected by him, published in the county in which the lands are situated, and from and after the expiration of such time, all such wild, vacant and forest lands are hereby declared to be and shall be deemed to be in the actual possession of the comptroller, and such possession shall be deemed to continue until he has been dispossessed by the judgment of a court of competent jurisdiction.

* * * * * * * * *

Sec. 39. Laws Repealed.—Of the laws enumerated in the schedule hereto annexed that portion specified in the last column is repealed.

Sec. 40. When to take Effect.—This chapter shall take effect on May first, eighteen hundred and ninety-three.

*Schedule of Laws Repealed.*

| Laws of. | Chapter. | Sections. |
|---|---|---|
| 1855..... | 427..... | 33-39, 42-62, 65, 68-93. |
| 1860..... | 209..... | All. |
| 1862..... | 285..... | 1. |
| 1870..... | 280..... | All. |
| 1873..... | 120..... | All. |
| 1875..... | 572 ..... | 1, 2, 3. |
| 1878..... | 152..... | Part amending sections 33, 34, 37, 38, 41, 48 and 86 of Laws 1855, chapter 427. |
| 1881..... | 402..... | 1, 2, 3, 4. |
| 1885..... | 453..... | 3, 4. |
| 1890..... | 206..... | All. |
| 1890..... | 556..... | All. |
| 1892..... | 266..... | All. |
| 1892 ..... | 347..... | All. |

§ 1502. AGAINST WHOM ACTION TO BE BROUGHT.

Where the complaint demands judgment for the immediate possession of the property, if the property is actually occupied, the occupant thereof must be made defendant in the action. If it is not so occupied, the action must be brought against some person exercising acts of ownership thereupon, or claiming title thereto, or an interest therein at the time of the commencement of the action.

§ 1503. WHO MAY BE JOINED AS DEFENDANTS.

In either of the cases specified in the last section, any other person claiming title to, or the right to the possession of, the real property sought to be recovered, as landlord, remainderman, reversioner, or otherwise adversely to the plaintiff, may be joined as defendant in action therefor.